DOCUMENT RESUME

ED 459 565 EC 308 753

TITLE	Maine Department of Education Regulation 180: Early Intervention and Special Education for Children Age Birth to under Age Six.
INSTITUTION	Maine State Dept. of Education, Augusta.
PUB DATE	2001-05-26
NOTE	111p.
AVAILABLE FROM	Maine State Dept. of Education, 23 State House Station, Augusta, ME 04333. Tel: 207-624-6600; Web site: http://www.state.me.us/education.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC05 Plus Postage.
DESCRIPTORS	Classification; Compliance (Legal); *Disabilities; Due Process; *Early Identification; *Early Intervention; *Eligibility; Evaluation Methods; Individualized Education Programs; Individualized Family Service Plans; Infants; Legal Responsibility; Preschool Children; Preschool Education; Referral; School Responsibility; *Special Education; *State Regulation; Student Evaluation; Student Rights; Toddlers
IDENTIFIERS	*Maine; Related Services

ABSTRACT

This document contains regulations governing the administration of the Childfind system for children age birth to under age 6, the provision of early intervention services to eligible children birth through two with disabilities and their families, and the provision of special education and related services to eligible children age 3 to under 6 with disabilities and their families living in Maine. Twelve sections contain provisions relating to: (1) the purpose of the early intervention and preschool program; (2) definitions of key early intervention and special education terms; (3) governance of the early intervention program, including the Interdepartmental Coordinating Council for Early Intervention; (4) administration of the early intervention program; (5) a statement of assurances; (6) the comprehensive Childfind system, child identification, qualifications of screeners, evaluators, and assessors, and billing procedures; (7) early childhood teams, parent participation, and early childhood team meeting documentation; (8) eligibility for services for children birth through age 2 and for children ages 3 through 5; (9) Individualized Family Service Programs and Individualized Education Programs; (10) early intervention and special education and related services; (11) provider qualifications and participation; and (12) procedural safeguards. (CR)

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ED 459 565

MAINE DEPARTMENT OF EDUCATION
REGULATION 180

Early Intervention and Special Education for Children Age Birth to Under Age Six

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May 26, 2001

EC 308753

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05-071 DEPARTMENT OF EDUCATION

Chapter 180 EARLY INTERVENTION AND SPECIAL EDUCATION FOR CHILDREN BIRTH TO UNDER AGE SIX

Summary: The rule governs the administration of the Childfind system for children age birth to under age six (B-5), the provision of early intervention services to eligible children birth through two (B-2) with disabilities and their families, and the provision of special education and related services to eligible children age three to under age six (3-5) with disabilities and their families, implementing 20-A MRSA c. 307-A and amendments thereto. **Those sections of the rule governing the provision of services to children B-2, only, appear in bold print.**

I. PURPOSE

The purpose of this rule is to establish and maintain a statewide network that ensures the provisions of Childfind as set forth in federal law, for Maine families and children, age birth to under age six (hereinafter, B-5). Additionally, **this rule sets forth provisions governing the delivery of services to eligible children age birth to under age three (hereinafter, B-2)** and three to under age six (hereinafter, 3-5) with disabilities and their families.

1. INTRODUCTION AND COMMITMENT

Maine law, 20-A MRSA c. 307-A. establishes and maintains a coordinated service delivery system for eligible children and their families. This system of care is the Child Development Services (CDS) System. Statewide coverage is established by a network of regional sites which ensure the coordination and delivery of services designed to meet the developmental (for children age B-2) and educational (for children age 3-5) needs of eligible children and their families. These regional sites are governed by Boards of Directors whose responsibilities are prescribed by law.

The Child Development Services System is committed to the greatest level of flexibility, creativity and personalization of the service delivery system in Maine. This statewide commitment to serving efficiently the needs of children and families, including those historically underrepresented and those on Indian reservations, requires full utilization of available resources and the implementation of procedures and methods of evaluation and service delivery, as well as procedures for safeguarding the rights of families and children B-5 that are consistent for the whole population eligible for services. This commitment also includes the responsibility to empower parents in the early intervention process so that they have the necessary information to:

A. participate, if they choose, in the process of identifying the needs of their children and the services for which they may be eligible;

B. gain access to essential services, such as adequate nutrition, suitable shelter, preventive health care;

C. make reasonable judgments concerning the development and implementation of a service plan for their children.

This rule is intended to implement the State's obligations under the federal Individuals with Disabilities Education Act (I.D.E.A.) 20 U.S.C. §§1400 et seq. as amended, and implementing federal regulations, 34 CFR Parts 300 and 303, and

Maine law. 20-A MRSA c. 307-A, as amended. The general principles governing Childfind and the provision of services to children, B-5 with disabilities, are set forth in this rule.

2. NON-DISCRIMINATION

Children in Maine, B-5, who have a disability, may not be excluded from the benefits of services to which they are entitled to under I.D.E.A. The Department of Education, through the regional site Boards of Directors, shall ensure, on a regional basis, the provision of appropriate services regardless of the nature and severity of the child's disability or developmental delay. A full range of services that are essential to meet the needs of eligible children and their families will be coordinated and delivered in a manner consistent with the practices set forth in this rule and applicable State and federal law and regulation.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§2000d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), and the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§12101 et seq.), the Department of Education and the Child Development Services System do not discriminate on the basis of sex, race, color, national origin, disability or age in determining eligibility for services or in its hiring practices.

3. OPPORTUNITY TO QUESTION

The parents of any child with a disability needing early intervention or special education and related services may question any decision or recommendation relating to the identification and evaluation of, and the provision of services to, the child as set forth in this rule.

4. ADVISORY RULINGS

Any interested person may submit a written request to the Commissioner for an advisory ruling. The Department may, at its discretion, issue an advisory ruling with respect to the applicability of any of these regulations, but the ruling will be confined to the interpretation of actual facts in evidence at the time of the request. All advisory rulings, or determinations not to issue an advisory ruling, will be issued in writing within sixty (60) days of the receipt of the request and will be transmitted directly to the person who made the request.

An advisory ruling will not be binding upon the Department nor upon any hearing officer appointed by the Commissioner to conduct due process hearings under this rule.

II. DEFINITIONS

1. ADMINISTRATIVE CASE MANAGER

The Administrative Case Manager is the person who serves as a single point of contact in helping families to obtain the screening, evaluation and assessment needed to determine the child's eligibility and service needs under the Individuals with Disabilities Education Act (I.D.E.A), 20 U.S.C. §§1400 et seq., as amended. The Administrative Case Manager also oversees the completion of the initial Individualized Family Service Plan (IFSP) or Individualized Education program (IEP) in keeping with federal and State rules and regulations.

2. ASSESSMENT

Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify the child's unique strengths and needs and the services appropriate to meet those needs: and the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child with a disability. Screening and evaluation are essential parts of the assessment process which is used to identify the full range of early intervention services essential to benefit the child and family. Assessment incorporates the findings of developmental, social, medical, health and therapeutic evaluations in the development of the program and service recommendations.

3. CHILD DEVELOPMENT SERVICES SYSTEM

The Child Development Services System, (CDS) means regional sites, a State level intermediate educational unit and the Interdepartmental Coordinating Council for Early Intervention established to ensure the provision of Childfind activities and early intervention and special education and related services to eligible children.

4. CHILDFIND

Childfind is the identification, location and evaluation of children B-5 who have a disability to determine eligibility to receive early intervention services or special education and related services.

5. COLLATERAL CONTACT

Collateral contact is face-to-face contact on behalf of an eligible child by a therapist to seek information or to discuss the child's IFSP/IEP with other professionals, caregivers, and others included in the treatment plan in order to achieve continuity of care, coordination of services, and the most appropriate mix of services for the child. Discussions between staff of the same clinic or program are not considered collateral contacts unless the discussion includes other professionals, caregivers, or others not employed by the same agency who are included in the IFSP/IEP.

6. COMMISSIONER

The Commissioner means the Commissioner of the Department of Education.

7. DEPARTMENT

Department means the Department of Education.

8. DEVELOPMENTAL DELAY

Developmental delay is the eligibility category that applies to children B-5 with a developmental delay in any one or more of the following developmental areas: cognitive development, physical development, including vision and hearing, communication development, social and emotional development and adaptive development, with the delay being such that the child needs early intervention services or special education and related services. This determination of eligibility is made by the Early Childhood Team (ECT), including the parent(s) of the child, subsequent to evaluation utilizing multiple measures of assessment. These must include:

A. Parental report
B. Informed clinical judgment by a qualified professional (including the use of interviews and observations)
C. One or more standardized assessment measures (criterion-based or norm-referenced for children B-2; norm-referenced for children 3-5).

Children age B-2 with a developmental delay have: (a) developmental delays, as measured by both diagnostic instruments that are criterion-based or norm-referenced and appropriate procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development, with the delay being such that the child needs early intervention services; or (b) a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, with the condition being such that the child needs early intervention services.

For children age 3-5, a determination of developmental delay is made by parents and qualified professionals on a multidisciplinary team, the Early Childhood Team (ECT). Children age 3-5 with a developmental delay have significant developmental delays in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development, as measured by both standardized, norm-referenced diagnostic instruments and appropriate procedures, with the delay or impairment being such that the child needs special education and related services:

Children age 3-5 who present a delay of less than 1.5 standard deviations in at least two areas of development may be identified as eligible if the other assessment methods described in this subsection indicate a significant developmental delay. The Administrative Case Manager or the Early Childhood Team shall recommend follow-up assessment for a child age 3-5 who presents a delay of between 1.0 and 1.5 standard deviations in at least two areas of development as appropriate to determine if the delay becomes a significant developmental delay. For children age 3-5 who have a delay that is not determined to be a significant developmental delay, the Administrative Case Manager or the Early Childhood Team shall make a referral to programs outside the CDS system who may provide services to at-risk children or families.

The reference to appropriate procedures, above, is to procedures conducted in accordance with evaluation protocol.

When using standardized measures as one of the three components of multiple measures of assessment in determining a developmental delay an indication of developmental delay will be defined as any of the following (unless the measures used, such as hearing and vision tests, have different criteria for establishing abnormal development):

i. A delay of approximately 2.0 or more standard deviations below the mean in at least one of the above areas of development; or

ii. A delay of approximately 1.5 standard deviations below the mean in at least two of the above areas of development.

A standard deviation below the mean in any area of development is determined by means either of evaluation of the overall developmental area, or by means of evaluation of specific areas within any given developmental area.

The standard deviation criterion shall be used only as a guideline to assist in the identification of developmental delay and must be considered in conjunction with the other assessment methods described in this subsection.

When evaluating children age B-2 for developmental delay by means of criterion-based instruments, a delay of approximately 2.0 standard deviations below the mean, as referenced in (i), above, should be replaced by a delay of 25% or more below chronological age, and a delay of approximately 1.5 standard deviations below the mean, as referenced in (ii) above, should be replaced by a delay of 15% below chronological age.

9. DISABLED (CHILDREN WITH DISABILITIES)

As used in this document, children B-5 with disabilities means:

A. for children B-2:

i. developmental delays, as measured by both diagnostic instruments that are criterion-based or norm-referenced and appropriate procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development, with the delay being such that the child needs early intervention services; or

ii. a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, with the condition being such that the child needs early intervention services; and

B. for children 3-5, evaluated in accordance with 34 Code of Federal Regulations (CFR) 300.530-534;

i. significant developmental delays, as measured by both standardized, norm-referenced diagnostic instruments and appropriate procedures in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development; or

ii. mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disability; orthopedic impairments; autism, traumatic brain injury; other health impairments; specific learning disabilities; deafness and blindness; or multiple disabilities, with the delay or impairment being such that the child needs special education and related services.

The reference to appropriate procedures, above, is to procedures conducted in accordance with evaluation protocol.

10. EARLY CHILDHOOD TEAM (ECT)

The Early Childhood Team is the multidisciplinary body responsible for determining eligibility and the development of the Individualized Family Service Plan (IFSP) or the Individualized Education Program (IEP) for children who are eligible for the entitlement provisions of the Individuals with Disabilities Education Act (I.D.E.A.) 20 U.S.C. §§1400 et seq., as amended.

11. EARLY EDUCATION

Early education includes those developmentally appropriate educational experiences, such as preschool, Headstart, and center-based early childhood programs in which all children B-5 may participate.

12. EARLY INTERVENTION SERVICES

Early intervention services means services for children B-2 that are designed to meet the developmental needs of an eligible child and the needs of the family related to enhancing the child's development: and are selected in collaboration with the parent; and are provided under public supervision by qualified personnel in conformity with an Individualized Family Service Plan (IFSP): and are provided at no cost unless federal or State law provides for a system of payments by families, including a schedule of sliding fees; and meet the standards of the State and are provided, to the maximum extent appropriate to the needs of the child, in natural environments, including the home and community settings in which children without disabilities participate.

13. EARLY INTERVENTION SYSTEM

"Early intervention system" means the total State effort that is directed at meeting the needs of eligible children B-5 and their families. This effort, organized and defined by statute, represents the programs and services available to families and young children, ages B-5, as eligible under the Departments of Education, Mental Health and Mental Retardation and Substance Abuse Services, and Human Services.

14. EVALUATION

Evaluation is the procedure or procedures used selectively with an individual child to determine the status of the child in each developmental area and the nature and extent of developmental delay or disability. Evaluation results are used to determine a child's initial and continuing eligibility; to design appropriate programs for children; and to make appropriate referrals for services. Evaluations are conducted by qualified individuals, using testing instruments and materials which are appropriate for the child. Procedures are performed in accordance with 34 CFR 300.530-534 and CFR 303.322-323.

15. FAMILY

The family is the primary caregiver in a child's daily life including but not limited to parents or guardians, persons acting as parents, or siblings.

16. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

Free appropriate public education (FAPE) means special education or instruction and related services which are provided, at no cost to the family, to eligible children age 3-5, including highly mobile children and children with disabilities who have been suspended or expelled from their programs, as well as eligible children who need special education and related services even though they are progressing from level to level in their programs.

17. HOME TEACHING

Home teaching consists of developmental therapy services, provided by qualified professionals, to eligible children to meet the objectives as outlined in the IFSP/IEP where the child's home environment has been designated by the Early Childhood Team (ECT) as the least restrictive environment in which services are to be provided.

18. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

The individualized education program (IEP) is a program plan developed by the Early Childhood Team (ECT) for children age 3-5, that includes information regarding a child's current level of functioning, a statement of goals and short term objectives, as well as specific special education and related service needs. For purposes of this rule, the Individualized Family Service Plan (IFSP) contains all of the IEP components required under 34 CFR 300.347.

19. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

The Individualized Family Service Plan is the comprehensive written plan developed by the Early Childhood Team (ECT) to identify needs, and identify and deliver services to a child, age B-5, and family eligible under the Individuals with Disabilities Education Act (I.D.E.A.) 20 U.S.C. §§1400 et seq., as amended. The IFSP must include all components listed in 34 CFR 303.344 and must also meet the requirements of an Individualized Education Program (IEP) outlined in 34 CFR 300.347.

20. INDIVIDUALS WITH DISABILITIES EDUCATION ACT (I.D.E.A.)

Formerly the Education of the Handicapped Act (EHA), P.L. 94-142. This federal law, as amended, requires that states receiving federal assistance under Part B and Part C of the Act, identify, locate and evaluate, at no cost to the family, children with disabilities and provide free appropriate public education (FAPE) or early intervention services to those found eligible under relevant parts of the Act.

21. INTERDEPARTMENTAL COORDINATING COUNCIL FOR EARLY INTERVENTION (ICCEI)

The Interdepartmental Coordinating Council for Early Intervention is the advisory body established in 20-A MRSA §7733 for the purpose of advising the Commissioner regarding the coordination of policies and programs aimed at implementing the federal I.D.E.A., Part B, Section 619 and Part C.

22. INTERMEDIATE EDUCATIONAL UNIT (IEU)

"Intermediate educational unit," means an entity that meets the definition of intermediate educational unit in the federal Individuals with Disabilities Education Act (I.D.E.A.), 20 U.S.C., §1401, as in effect prior to June 4, 1997, and that is a public authority, other than a local educational agency, under the general supervision of a State educational agency, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to children with disabilities within the State.

23. LEAST RESTRICTIVE ENVIRONMENT

The least restrictive environment is the natural environment or the types of settings in which children with disabilities would participate, or receive services, to the maximum extent appropriate to the needs of the child, with children of comparable ages without disabilities; special classes, separate schooling or other removal of children with disabilities from the regular educational or service environment is permitted only when the nature or the severity of the disability is such that educational services in regular classes or settings, with the use of supplementary aides and services, cannot be achieved satisfactorily.

24. MAINSTREAM (OR INCLUSIVE) PROGRAMS

Mainstream (or inclusive) programs are programs which are designed for all children, regardless of whether or not they have a disability.

25. NATIVE LANGUAGE

The term native language, when used with reference to a person with limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parent of the child, except that in all direct contact with the child, including evaluation, the native language is the language normally used by the child in the home or learning environment and not that of the parent if there is a difference between the two. For a person with deafness or blindness, or with no written language, the mode of communication would be that normally used by the person (such as sign language or Braille). Use of native language is required in evaluation of the child, in prior notice to parents and for information relevant to activities for which parental consent is sought.

26. PARENT

A parent means a person who is the natural or adoptive parent, legal guardian, or a person acting as a parent or a surrogate parent who has been appointed as specified in I.D.E.A.. The term does not include the State if the child is a ward of the State.

A foster parent may act as a parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law, and the foster parent:

A. has an ongoing, long-term parental relationship with the child;
B. is willing to make the educational decisions required of parents under I.D.E.A., and
C. has no interest that would conflict with the interests of the child.

27. RECORDS

The term records refers to those records which are maintained by a regional site Board, provider, or agency which are directly related to a child, and any information pertaining to an identifiable child. The type of records covered under this term are further defined in the regulations implementing the Family Education Rights and Privacy Act of 1974.

28. REGIONAL BOARD

The regional Board is the governing Board of each of the regional sites (intermediate educational units or private non-profit corporations) with responsibilities:

A. to ensure the identification, at no cost to the family, of children age B-5, in their catchment areas who are eligible for services; and
B. to ensure the provision of early intervention services or special education and related services to those eligible under the Act.

29. RELATED SERVICES

Related services means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education. A service is special education if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

30. SCREENING

Screening is a brief procedure, done periodically, designed to identify children who should receive more intensive diagnosis or evaluation. It is a systematic process conducted by individuals appropriately trained in the screening procedure. Screening is the initial phase of the assessment process.

31. SERVICE COORDINATOR/TARGETED CASE MANAGER

The Service Coordinator/Targeted Case Manager is the person who coordinates all services across agency lines and serves as the single point of contact in helping parents to obtain the services and assistance they need. Service Coordinators must have demonstrated knowledge and understanding about children eligible for services and about the nature and scope of services available under the State's early intervention program, including the system of payments for services. Service Coordination is the obligation of the regional Board, and the Board is responsible for the implementation of the IFSP/IEP, and for coordination with other agencies and persons, and for coordination with other services the child needs or is being provided.

32. SPECIAL PURPOSE PROGRAM

A special purpose program is a public or private program which is established specifically to serve children with disabilities and/or developmental delays.

33. SPECIAL EDUCATION

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities, including classroom instruction, home instruction and instruction in hospitals and institutions, and instruction in physical education as defined in 34 CFR 300.14. The term includes speech-language pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

34. STATE EDUCATIONAL AGENCY

State educational agency means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designed by the Governor or State law.

35. B-2 (BIRTH THROUGH TWO)

Birth through two is the age of a child from birth to under age 3.

36. 3-5 (THREE THROUGH FIVE)

Three through five is the age of a child from the child's third birthday to under age 6, until the first day of the receiving public school's program year.

III. GOVERNANCE

The Maine Department of Education, as the State educational agency, is responsible for ensuring that all the provisions of the federal Individuals with Disabilities Education Act (I.D.E.A.), as amended, are met.

Maine law, 20-A MRSA c. 307-A defines the structure through which the federally required Childfind activities and the delivery of early intervention services for eligible children B-2 and free appropriate public education (FAPE) services for eligible children 3-5 are to be carried out. Specifically, the Child Development Services System, is responsible for maintaining a comprehensive Childfind system for children age B-5, and for ensuring the provision of early intervention services for eligible children B-2, and for ensuring the provision of special education and related services for eligible children age 3-5.

The Child Development Services System comprises the Interdepartmental Coordinating Council for Early Intervention, a State intermediate educational unit and regional sites organized as intermediate educational units or non-profit corporations which are locally governed by a Board of Directors.

The regional site Board of Directors, through an approval agreement or a contract with the Department of Education, ensures the provision of Childfind activities for children B-5 and the coordination of appropriate services for eligible children B-5, in accordance with this rule.

1. DEPARTMENT OF EDUCATION

The Department of Education, as the designated State educational agency, is responsible for carrying out the State's obligations under the federal Individuals with Disabilities Education Act, as amended.

A. Duties

The Department of Education shall:

i. Submit the State's plan for meeting the requirements of the federal I.D.E.A., as amended;
ii. Adopt rules necessary for the implementation of Childfind and the provision of services to eligible children B-5, including provisions governing payment for early intervention services for eligible children B-2;
iii. Enter into contracts, leases or agreements or any other instruments or arrangements that are necessary, incidental or convenient to the performance of its duties specified in 20-A MRSA c. 307-A;
iv. Enter into approval agreements or contracts with regional site Boards of Directors for purposes of ensuring the provision of Childfind activities and services on a regional basis;
v. Ensure regional site compliance with State and federal law; and
vi. Administer federal funds granted under the federal I.D.E.A., Part C and Part B, Section 619, as amended.

2. INTERDEPARTMENTAL COORDINATING COUNCIL FOR EARLY INTERVENTION

The Interdepartmental Coordinating Council for Early Intervention (ICCEI) is established in 20-A MRSA §7733 as an advisory body to the Commissioner regarding the coordination of policies and programs aimed at implementing the federal I.D.E.A., as amended. The obligations of the Council may be met, at the

Commissioner's discretion, by any other advisory body to the Commissioner required under the federal I.D.E.A.

A. Membership

i. Composition

The Interdepartmental Coordinating Council for Early Intervention (ICCEI) must be composed of at least 15 members and no more than 25 members. Members must include:

a. an individual with disabilities;
b. at least 20% membership as parents of children with disabilities age 12 or under;
c. at least one parent of a child with disabilities age 6 or under;
d. a State legislator;
e. at least 20% membership as public or private providers of early intervention services;
f. at least 1 one member involved in personnel preparation in an institution of higher education;
g. at least one member from each State agency involved with the provision of, or payment for early intervention services and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies, including the State agency responsible for governance of insurance;
h. at least one member from the Department of Education with responsibility for programs for children with disabilities;
i. a representative from a Head Start agency or program in the State;
j. a representative from a State agency responsible for childcare;
k. a teacher; and
l. representatives from private schools and private charter schools.

ii. Appointment

Members must be appointed by the Governor and must reasonably represent the population of the State. A majority of the members of the Council must be individuals with disabilities or parents of children with disabilities.

iii. Officers

The membership must elect a Chair and other officers in keeping with ICCEI bylaws. The Chair must not be a representative from the lead agency for Part C.

iv. Terms of Appointment

Appointment must be made for two year terms, with no individual serving more than two consecutive terms.

v. Meetings

The ICCEI must meet at least quarterly.

vi. Steering Committee

A steering committee must be designated by the ICCEI membership to carry out the duties assigned in 20-A MRSA §7733. The steering committee must be composed of, minimally, one parent, one provider, and one representative from a State agency. The ICCEI bylaws must include a description of a method of reporting by the steering committee to the ICCEI.

B. Duties

The ICCEI is required to:

i. Recommend to the department, with the advice of the regional site Boards, legislation needed to further develop the statewide system of quality early intervention services in the State;
ii. Consider the issues outlined in 20-A MRSA §7733;
iii. Develop and adopt bylaws for its conduct and elect one member as Chair;
iv. Advise the Department in the development and implementation of rules necessary to the fulfillment of the duties and purposes of 20-A MRSA c. 307-A;
v. Advise and assist the Department of Education in the development and implementation of policies and procedures, development of reports to the Secretary of the United States Department of Education, and the development of the application for Part C funds; and
vi. Provide the Joint Standing Committee on Education a yearly report on the early intervention in the system in the State, which includes a demonstration that funds provided under I.D.E.A. were used to supplement and not supplant the level of other federal, state and local funds available for children with disabilities, and were not used to satisfy a financial commitment for services that would have been paid for by another agency, including the Department of Human Services (Medicaid), but for the fact that the services are listed on an IFSP/IEP.

3. STATE INTERMEDIATE EDUCATIONAL UNIT (IEU)

A. Duties

The State IEU is required to:

i. Develop and adopt statewide policies and rules relating to I.D.E.A. Part B Section 619 and Part C including but not limited to:

    a. personnel standards that reflect highest entry level
    b. comprehensive system of personnel development
    c. program monitoring
    d. data collection
    e. interagency agreements at the state level
    f. public awareness;

ii. Provide technical assistance and training to ensure program and policy compliance;
iii. Review or perform audits of regional site fiscal records; and
iv. Certify and train individuals designated by regional site Boards to commit funds for FAPE services.

4. REGIONAL SITE BOARD OF DIRECTORS

A. Intermediate Educational Unit or Private Nonprofit Corporation

Regional Site Boards of Directors must choose between organizing as an intermediate educational unit or as a private nonprofit corporation. The Board Chair must indicate to the Department in writing the organizational structure chosen by the Board.

B. Membership

Membership on the regional site Board of Directors must include representatives of the regional offices of the Department of Human Services and the Department of Mental Health and Mental Retardation and Substance Abuse Services, representatives of the local school administrative units, parents of infants and children with disabilities, and other community members as determined appropriate. Terms of membership and methods of appointment or election must be determined by Board of Directors bylaws, subject to approval by the Department.

C. Duties and Responsibilities

The regional site Boards of Directors are required to:

i. Provide fiscal management of funds allocated to it by the Department, in compliance with State and federal laws;
ii. Employ qualified staff, determine fringe benefits and select an employee retirement plan that meets applicable State and federal requirements;
iii. Bargain collectively, if employees choose to be represented by a collective bargaining agent;
iv. Enter into contracts, leases and agreements, subject to review (at the Department's request) or approval (prototype provider contracts, multi-year leases and memoranda of understanding with other entities) by the Department, as necessary, to carry out Childfind activities and provide services under this rule;
v. Perform appropriate data collection, training and staff development in accordance with the federal I.D.E.A., Part C;
vi. Ensure that Childfind activities are carried out in keeping with Department rules;
vii. Ensure the provision of ChildCount activities as required by the federal I.D.E.A. and Department policies;
viii. Ensure that eligible children age B-2 receive early intervention services in accordance with Department rules;
ix. Ensure that eligible children age 3-5 receive FAPE services, in collaboration with school administrative units whenever possible;
x. Coordinate the development of Individualized Family Service Plans or Individualized Education Programs, if preferred by the parent of a child age 3-5, for eligible children and families in keeping with Department rules;
xi. Designate persons authorized to commit regional site funds for services;
xii. Adopt administrative, personnel, fiscal and program policies in keeping with State and federal law and Department rules and policy;
xiii. Contract, whenever possible, with providers of early intervention services approved by (that is, with provider/supplier agreements with) the Bureau of Medical Services within the Department of Human Services;

xiv. Seek reimbursement for targeted case management following enrollment with the Bureau of Medical Services within the Department of Human Services; and

xv. Establish provider advisory boards to advise the regional Boards on matters related to the provision of services to children and families within the region, in accordance with rules established by the Commissioner.

IV. ADMINISTRATION

1. REGIONAL SITE PLAN OR CONTRACT APPLICATION

The regional site Board of Directors must submit annually to the Department a regional site application for annual entitlement plan approval (intermediate educational unit), or for a contract (private nonprofit corporation) which shall be completed in accordance with established Department policies and procedures.

Applications will be reviewed by the Department for the following:

A. Inclusion of all required components and information;
B. Appropriateness of the budget to the scope and design of the program activities defined by the regional site;
C. Relationship of site goals and objectives to the purposes for which the regional sites are established; and
D. Design of administrative and program activities in relation to previous program and fiscal audits.

2. APPROVAL AGREEMENT OR CONTRACT

A. An approval agreement or a contract is required between the Department and each regional site Board of Directors, as the mechanism for formally approving the allocation of State and federal funds by the Department to the regional site Board of Directors and for assuring coordinated service delivery in each region of the State. The agreement of approval or contract must be signed by the Chair of the regional site Board of Directors as a means of accepting the allocation by the Board of Directors. The agreements of approval or contracts between regional site Boards of Directors and the Department of Education shall ensure:

   i. that screening, evaluation and referral services are accessible to all children ages B-5, at no cost to the family;
   ii. that infants and toddlers ages B-2 have early intervention services available to them through third party payment or through a system of payments by families, including a schedule of sliding fees; and
   iii. that children age 3-5 with disabilities have available to them special education and related services at no cost to the family.

B. The regional site Board of Directors shall ensure that these activities are performed in compliance with applicable federal and State law and regulations.

In the event that the regional site Board of Directors does not meet compliance requirements, the Department will develop a corrective action plan with the regional site Board of Directors and may assume temporary responsibility for operations of the regional site that fails to meet compliance requirements.

3. PROGRAM AND FISCAL MONITORING

Program and fiscal reports must be submitted by the regional site Board of Directors to the Department as specified in the agreement of approval or the contract. Additionally, the Department or its designee will make on-site visits annually or more frequently, if determined by the Department as necessary, to monitor program records and fiscal accounting practices. Corrective action plans will be developed to correct deficiencies cited.

4. REGIONAL SITE ON-SITE PROGRAM REVIEW

An extensive on-site program review is conducted by the Department or its designee for each regional site once every five years or more frequently, if determined by the Department as necessary, to ensure compliance with federal and State program requirements.

5. FISCAL MANAGEMENT

A. The CDS system is supported by federal and State funds. Tax deductible contributions from non-governmental sources may be accepted by the State IEU or the regional site Boards.

B. The financial responsibilities of the Department include:

- i. performance of fiscal assessments to determine regional site Boards' and the State IEU's financial capacity, the adequacy of their accounting system and the methods and the extent of their fiscal compliance; and
- ii. coordination of applicable applications, budget requests, and correspondence due the legislature and federal agencies regarding funds intended for use by the Child Development Services System.

C. The financial responsibilities of the State IEU include:

- i. bookkeeping and accounting in accordance with the State of Maine Accounting Handbook for Local School Systems, revised June 1989; this document is commonly referred to as Handbook III, Revised; the term "State IEU shall be substituted for the term "LEA" throughout the document;
- ii. submitting to the Department, at the end of each calendar quarter, a financial report with comparison to budget not later than the last day of the following month in a format supplied by the Department;
- iii. reviewing financial report submission for consistency and compliance with financial allocation policies and procedures including compliance with federal and State regulations;
- iv. establishing internal controls policies and procedures as needed, in accordance with Generally Accepted Accounting Principles for Governmental operations;
- v. receiving approval from the Department for budget changes in excess of 10% and not less than $500.00 for any one line item;
- vi. receiving Departmental approval on the disposition of fixed assets in excess of $500 with an estimated useful life of more than one year;
- vii. use of a Purchase Order and Voucher Request system for all purchases in excess of $100 and for direct service contracts; and
- viii. use of payroll procedures which include employee signed time records and compliance with all applicable federal and State statutes.

D. The financial responsibilities of the regional site Board of Directors include:

- i. bookkeeping and accounting in accordance with the State of Maine Accounting Handbook for Local School Systems revised; the document is commonly referred to as Handbook III, Revised; the words "regional site Board" shall be substituted for "LEA" whenever necessary;

ii. submitting to the Department, at the end of each calendar quarter, a financial report with comparison to budget not later than the last day of the following month in a format supplied by the Department,

iii. reviewing financial report submissions for consistency and compliance with financial allocation policies and procedures including compliance with federal and State regulations;

iv. establishing internal control policies and procedures as needed, that are in accordance with Generally Accepted Accounting Principles for Governmental operations;

v. securing audits in accordance with the provisions of the Maine Accounting and Auditing Practices Act.

vi. receiving approval from the Department for all budget changes in excess of 10% and in excess of $6,000 for any one line item;

vii. receiving approval from the Department for the disposition of fixed assets in excess of $500 and having an estimated useful life of more than one year;

viii. utilizing a Purchase Order and Voucher Request system for all administrative purchases in excess of $100.00

ix. having all contracts reviewed by the Department of Education, in accordance with 20-A MRSA §7731(6), prior to execution by the regional board of directors; and

x. having payroll procedures which include employee signed time records in compliance with all applicable federal and State statutes and regulations.

V. STATEMENT OF ASSURANCES

In accordance with federal requirements, the regional site Boards of Directors must, in the manner prescribed, submit to the Department, statements of assurances, policies and procedures, as required by 34 CFR 300.121-300.156 and 34 CFR 303.121-303.128.

VI. COMPREHENSIVE CHILDFIND SYSTEM

Childfind is the identification, location and evaluation of children age B-5 with disabilities, including highly mobile children age 3-5, children age 3-5 who have been suspended or expelled from their programs, and children age 3-5 who may need services even through they are progressing from level to level in their programs to determine eligibility to receive services.

Childfind activities include:

- Referral to regional sites;
- Assignment of Administrative Case Manager by the regional site;
- Screening, evaluation and assessment of the child;
- Convening of the Early Childhood Team (ECT) by the Administrative Case Manager for the purposes of developing the initial Individualized Plan (IFSP/IEP).

The regional site Boards are responsible for overseeing the completion of all Childfind activities.

1. REFERRAL

The Boards of the regional sites are responsible for providing notice of Childfind activities in accordance with 34 CFR 300.561 and **for providing annual written notification to all primary referral sources of their obligation under 34 CFR 303.321 for referring all identified children, B-2, in need of evaluation or services to the regional site within two (2) working days after a child has been identified. Primary referral sources include:**

A. Hospitals, including prenatal and postnatal facilities;
B. Physicians;
C. Parents;
D. Day care programs;
E. Local educational agencies;
F. Public health facilities;
G. Other social service agencies; and
H. Other health care providers.

The notice must be published or announced in newspapers or other media, such that parents throughout the regional site's catchment area are notified of Childfind activities.

The regional sites must have on file a copy of the notification, a list of providers notified, and policies and procedures for the notification process, including the identification of new providers.

2. ADMINISTRATIVE CASE MANAGER

The Administrative Case Manager assists the family in securing the necessary screenings, evaluations and assessments needed to determine the child's eligibility under the federal Individuals with Disabilities Education Act. The Administrative Case Manager oversees the development of the initial IFSP/IEP. The regional site Board is responsible for administrative case management and for assigning an Administrative Case Manager to a child upon referral to the regional site. The regional site Board is responsible for ensuring that all activities conducted by assigned Administrative Case Managers are performed in accordance with the federal Individuals with Disabilities Education Act (I.D.E.A.) and related Department of Education rules.

3. IDENTIFICATION BY SCREENING, EVALUATION AND ASSESSMENT

The process of identifying children with disabilities begins with screening. Screening is a brief procedure done periodically to identify children who may need more in depth evaluation. It assists in identifying children who may have developmental delays or disabilities in order to initiate access to early intervention services. Developmental screening services are available on a recurrent or periodic basis. CDS sites within the Child Development Services System serve as centers for referral for ensuring that children are screened; and for ensuring that appropriate plans are made for continuing the process of determining needs and services. Screening begins the process of identification.

Following this review, an evaluation may be needed to provide a closer and more complete examination of the child by one or more professionals qualified and certified in a specialized field. The Administrative Case Manager assists the family through the screening and evaluation, both of which are part of the assessment process that is ongoing throughout the period of a child's eligibility.

A qualified individual or agency who performs the evaluation for initial eligibility on a given child may provide services to that child when it is determined by the regional Board to be in the best interest of the child, and/or necessary to meet compliance requirements and/or necessary to provide a specialized service that is otherwise unavailable. This determination may, at the discretion of the Board, be reflected in an agreement with the individual or agency providing the services.

A. Evaluation and assessment must be:

- i. conducted by personnel trained to utilize appropriate methods and procedures;
- ii. provided and administered in the child's and family's native language or other mode of communication, unless it is clearly not feasible to do so;
- iii. selected and administered so as not to be racially or culturally discriminatory;
- iv. utilized to assess special areas of educational or developmental need and not merely a single IQ;
- v. validated for the specific purpose for which they are used and based on informed clinical opinion;
- vi. administered in such a way that no single procedure is used as the sole criterion for determining an appropriate early intervention program for a child;
- vii. selected and administered to ensure accurate reflection of the child's aptitude (or strengths), achievement level or other factor tested for, rather than the child's impaired skill level; and
- viii. comprehensive, covering all areas related to the child's suspected disability.

Re-evaluations for children age 3-5 will occur minimally every three years. Evaluations or assessments are made by multidisciplinary teams, when appropriate, including specialists with knowledge in the area of the suspected disability and all information drawn from tests, recommendations, and physical and psychosocial assessments is to be considered in making decisions about the provision of services to the child and family.

B. Screening

Screening assesses one or more developmental and/or health area, on the basis of the referral received, including any supporting documentation. These screenings may be offered through a regional site or by providers within the community. If a screening is conducted by a provider in the community, the family is to be referred to the regional site in keeping with the referral requirements outlined in Section VI. 1 of this rule.

C. Evaluation and Assessment

Evaluation or assessment of each child age B-2 referred must include:

i. Health: A review of pertinent records related to the child's current health status and medical history.

ii. Development: An evaluation or assessment of the child's level of functioning and unique needs in each of the following developmental areas, including the identification of services appropriate to meet those needs:

a. Cognitive development
b. Physical development, including vision and hearing
c. Communication
d. Social or emotional development
e. Adaptive development.

iii. Family: An assessment of the family's resources, priorities and concerns related to the development of the child and the nature and extent of early intervention services needed by the child and family. The assessment must:

a. Be voluntary on the part of the family
b. Be based on information provided by the family through a personal interview
c. Incorporate the family's description of its resources, priorities and concerns.

D. Evaluation or reevaluation of each child age 3-5 must include:

i. Review of existing evaluation data on the child, including evaluations and information provided by the child's parents, current program-based assessments and observations, and provider's observations; and

ii. Identification, on the basis of the review described above and input from the child's parents of any additional data needed to determine:

a. whether the child has a disability as described in Section VIII.3 of this rule, or in the case of a reevaluation, whether the child continues to have such a disability;
b. the present levels of performance and educational needs of the child;
c. whether the child needs special education and related services or in the case of reevaluation, whether the child continues to need these services; and

d. whether any additions or modifications to special education and related services are needed to enable the child to meet the measurable annual goals described in the child's IFSP/IEP and to participate, as appropriate, in the general curriculum, or appropriate activities.

In the case of initial evaluation or reevaluation, if the ECT and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child has a disability or continues to have a disability, the regional CDS Board must notify the child's parents of: the determination that additional evaluation data are not needed; the reasons for that determination; and the right of the parents to request an assessment to determine whether the child continues to have a disability. If the parents request such an assessment, the regional CDS Board must complete the assessment in time to ensure that the child's IFSP/IEP is completed within sixty (60) days from referral for evaluation.

E. Completion of the Screening, Evaluation and Assessment Components by Separate Providers

Not all components of the screening, evaluation and assessment must be performed by the same examiner.

The initial examiner may make a screening referral if a test is required and the initial examiner is not equipped, appropriately credentialed or trained to perform the required test.

The Administrative Case Manager will ensure and coordinate all of the above components of the screening, evaluation and assessment and is responsible for ensuring that written results submitted by the providers are contained in the child's file and that parents are informed of the results.

If any components of a screening, evaluation or assessment have been appropriately performed within the prior six months, the results and findings are to be utilized with no unnecessary repetition. The Administrative Case Manager is responsible for collecting and integrating that information.

F. Omission of Procedures in Screening, Evaluation and Assessment

Procedures may be omitted only in the following circumstances:

i. Procedure Was Impossible to Perform

In some circumstances the child's behavior or age may be such that a procedure is impossible to perform. In the interest of providing comprehensive procedures for all children, it is recommended that the examiner recall the child and attempt the procedure(s) again before billing for the procedure.

ii. Religious Exemption

Some procedures are contrary to the religious beliefs of some parents and may be refused on that basis.

iii. Parent Did Not Want Procedure Done

Parents may occasionally ask that specific procedures be omitted. These personal requests must be granted but should be distinguished from religious exemptions in any record made or report filed.

iv. Procedure Was Not Medically Necessary or Was Medically Contraindicated

The physician may omit a procedure if, in the physician's professional judgment, the procedure is medically unnecessary or contraindicated.

v. Pre-existing Conditions

Children who have pre-existing conditions and are exhibiting delays in development may, with documentation of a physical examination, be exempt from screening and may be referred immediately for evaluation and assessment.

Any omission of procedures, along with the reasons why they were not performed, must be noted by the Administrative Case Manager in the child's file.

G. Notification of Child's Primary Care Physician

The Administrative Case Manager is responsible for ensuring that a summary of the results of screening, evaluation and assessment is provided with written parental consent, to the child's primary care physician.

4. SCREENING, EVALUATION AND ASSESSMENT: REVIEW OF RESULTS

A. After the completion of screening, evaluation and assessment, the ECT meets to review the results of the procedures and to determine the need for further evaluation or services. This team shall have input from the professionals that administered the screening, evaluation and assessment, the parent(s), the Administrative Case Manager, and at least one other appropriately qualified provider who is involved in the provision of services and who is familiar with the child.

Since learning disabilities are commonly viewed in an academic context, the term "learning disabilities" typically is not used for children B-5 and the concerns are addressed as developmental delays, instead. However, if the child is being evaluated for specific learning disabilities, the requirements in i-iii, below must be met.

i. The evaluation team shall include the child's teacher or an individual qualified to teach a child of that age and at least one person qualified to conduct individual diagnostic examinations of children; and

ii. The team shall determine whether or not the child has a specific learning disability on the basis of both the criteria listed in 34 CFR 300.541 (the child both does not achieve commensurate with age and ability levels when provided with learning experiences appropriate for the child's age and ability levels, and has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, math calculation or math reasoning that is not the result of visual, hearing or motor disabilities, mental retardation, emotional disability or environmental, cultural or economic disadvantage) and observation of the child in the program setting by a team member other than the child's regular teacher or, if the child is not in an educational program, in an environment appropriate for a child of that age.

iii. For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by 34 CFR 300.534(a)(2), must include a statement of:

a. whether the child has a specific learning disability;
b. the basis for making the determination;
c. the relevant behavior noted during the observation of the child;
d. the relationship of that behavior to the child's academic functioning;
e. the educationally relevant medical findings, if any;
f. whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
g. the determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

B. After the screening, evaluation and assessment have been completed, the Administrative Case Manager must ensure that the parent of the child receives a written explanation of the results.

C. Parents have the right to an independent evaluation as outlined in Section XII.6 of this rule.

5. RECORDS

A. The regional site Board must ensure that the Administrative Case Manager establishes and maintains a record for each child including, but not limited to, the following:

i. Name of child
ii. Address
iii. Birthdate
iv. Health Insurance and/or Medicaid information
v. Name of parents or guardian
vi. Dates of screenings and evaluations
vii. Screeners and evaluators: names, agency, telephone numbers and
viii. Results of screenings and evaluations

Regional site Boards must ensure that providers include proper documentation in these records, in accordance with Sections VI. 5(B) and 5(C) of this rule.

B. Screening Documentation

i. Screening and Summary of Results

a. Copy of screening
b. Summary of results

ii. Referral for Evaluation and Medical Treatment of Problems Discovered or Suspected as a Result of Screening

a. Record of immunizations given or record of reason if not given
b. Medical treatment given at the time of the screening visit
c. Referrals (to others or return to the examiner's office) for medical, medically-related, hearing, vision, dental and/or developmental evaluation or treatment
d. Reports from providers to whom children were referred

C. Evaluation and Assessment Reports and Summary of Results

Evaluation and assessment documentation includes test descriptions, test results, interpretation of the results, behavioral observations, interpretations of the observations, results of informal assessment procedures and recommendations.

D. Distribution of Screening, Evaluation and Assessment Results

The Administrative Case Manager is responsible for ensuring copies of written screening, evaluation and assessment results are sent to the following individuals:

i. Child's parents or guardian
ii. Child's primary care physician

The Administrative Case Manager is responsible for ensuring that informed written consent of the parent is obtained before any records information is forwarded to a third party. Any refusal of a parent to provide written consent must be documented in the child's record by the Administrative Case Manager.

Regional site Boards are responsible for informing providers of confidentiality requirements outlined in I.D.E.A., the Family Education Rights and Privacy Act (FERPA), and this rule.

6. QUALIFICATION OF SCREENERS, EVALUATORS AND ASSESSORS

A. The regional Board is responsible for ensuring that any person who conducts a screening or evaluation, or assessment, the results of which are used by an ECT to determine eligibility or service needs for a child:

i. Meets the professional qualifications of the publisher of the evaluation if the evaluation is a standardized instrument; and

ii. Is trained and competent in the administration and interpretation of the instrument(s) utilization.

7. PAYMENT

Payment to providers for screening, evaluation and assessment services is made by the regional site Board. Rates are established by regional site Boards, and shall not exceed the usual and customary provider rate, or be less than the Medicaid rate if one has been established for the provider.

A. Screening, Evaluation and Assessment

i. Payment may be made for screening, evaluation and assessment resulting from:

   a. a prior screening referral;
   b. an ECT recommendation; or
   c. a parent request for an independent evaluation pursuant to Section XII.6 of this rule.

ii. Payment for screening, evaluation and assessment as designated in Section VI.7(A)(i) is for the procedures performed, and is contingent upon documentation and submission of reports required in Section VI.5(C) of this rule.

iii. Documentation approval is required in order to ensure payment for screenings, evaluation or assessment procedures that are performed out of State.

   Requests for documentation approval are to be submitted to the CDS State IEU and must include the following information:

   a. child's name
   b. CDS regional site
   c. procedure to be performed, and, if applicable, the names of physicians or providers consulted relative to the availability of recommended procedure in Maine, and reasons why the procedures cannot be provided in Maine and the name of the out-of-state provider chosen to provide the service
   d. relevant supporting evaluations, if available
   e. the child's IFSP/IEP and/or ECT minutes, if available, or the screening summary if the child is still in Childfind
   f. the estimated cost of the service.

   If additional information is needed or it appears that the service may be available within the State of Maine, the Department of Education reserves the right to refer the child to another physician/provider within the State for the procedure to be performed. Written notification of completeness of documentation will be sent to the regional site.

iv. Payment for screening, evaluation or assessment services is not permitted if a comparable screening, evaluation or assessment was completed within the prior six months, and no screening, evaluation or assessment more frequent than six months was recommended either by prior evaluation or by screening or evaluation protocol. If previous screening, evaluation or assessment results, for which the parent paid prior to the referral to CDS, are current and are used by the ECT the parent is entitled to reimbursement for the screening, evaluation or assessment.

v. All public sources for the payment or provision of screening, evaluation or assessment services must be exhausted by the Administrative Case Manager prior to authorization for payment under this rule.

B. Treatment for Illness Detected During Screening, Evaluation or Assessment

i. If a child is obviously ill at the time of the screening, evaluation or assessment appointment, the child should not be screened, evaluated or assessed because the illness may distort the results. The appointment should be rescheduled for a later date, when the procedure can be completed and billed as such. Payment will be made only for the time at which the screening, evaluation or assessment is completed.

ii. If, however, during the screening, evaluation or assessment an illness is detected, the screener, evaluator or assessor may complete the screening, evaluation or assessment and a qualified provider may provide treatment on the same day.

8. BILLING PROCEDURES

A. Billing for screeners, evaluators and assessors shall be in accordance with the policies and procedures of the regional site Board where the screening, evaluation or assessment was requested.

For audit purposes, all bills submitted to the regional site for screening, evaluation and assessment must include:

i. Name of child
ii. Date of service
iii. Billing date
iv. Insurance payments received
v. Name of provider
vi. Provider Employee Identification number or social security number
vii. Type of screening or evaluation performed
viii. Unit rate
ix. Number of units billed
x. Total amount due

9. MONITORING AND COMPLIANCE

A. Audit and Review of Claims and Records

i. Regional site Boards are required to maintain adequate records as essential to ensure the delivery of quality care and postpayment review by the Department of Education. In the absence of proper and complete records, no payment will be made and payments previously made may be recovered.

ii. Regional site Boards are responsible for providing records and other pertinent information, upon informed, written consent of the parent or guardian, to the Department of Education upon request and at no cost to the Department.

iii. Upon request, the screener, evaluator or assessor must furnish to the Department of Education without additional charge, the records, or copies thereof, relating to and substantiating services billed by the screener, evaluator or assessor.

iv. The Department shall recoup and/or withhold funds when a regional site Board has dispersed Department funds in any of the following ways:

   a. to an unqualified screener, evaluator or assessor;
   b. for a screening, evaluation or assessment which already has been performed within the previous six (6) months with no recommendation for rescreening, reevaluation or reassessment;
   c. for payment for immunizations that are otherwise available through the state immunization program; or
   d. for a screening, evaluation or assessment the costs of which are payable through other public sources (such as the Coordinated Care Program).

VII. EARLY CHILDHOOD TEAMS

The Early Childhood Team (ECT) is a multidisciplinary team, involving the parents of a child with disabilities and representatives of the regional site and professionals of relevant disciplines, that is responsible for determination of eligibility and the provision of integrated and coordinated evaluation, assessment and services.

1. MEETINGS

ECT meetings are held, in settings and at times convenient for families, for the following purposes:

A. Evaluations - to determine evaluations to be conducted;
B. Eligibility for Services Determination - to determine eligibility for services;
C. IFSP/IEP Development, Review and Revision - to complete and update IFSPs/IEPs for eligible children; this includes the identification of outcomes expected to be achieved for the child and family, appropriate services to be provided in the least restrictive setting appropriate to meet the child's goals and objectives, and specification as to frequency, intensity, duration of those services.

2. EARLY CHILDHOOD TEAM PARTICIPANTS

A. Required Participants for Determining Evaluations and Eligibility for Services - The following is a list of individuals required to participate in ECT meetings to determine evaluations and eligibility for services:

    i. the parent(s);
    ii. for children 3-5, the agency representative who is designated by the regional site Board to commit funds and is qualified to provide or supervise the provision of services;
    iii. the child's teacher or service provider;
    iv. the Administrative Case Manager;
    v. a member of the screening or evaluation team or, in the case where no teams were used, all individuals directly involved in screening or evaluation of the child; and
    vi. for children age 3-5, a regular education teacher if the child is, or may be, participating in the regular education environment.

Persons listed in Section VII. 2 (A)(i), (ii), (iii) and (iv) and (vi), and at least one individual listed in Section VII. 2 (v) must be in attendance at the meeting. Parents may participate through the alternative participation methods outlined in Section VII. 3 (C). Other screeners and evaluators may participate in the alternative participation methods outlined in Section VII. 2 (C).

B. Required Participants for Developing and Revising IFSPs/IEPs - The following is a list of participants required for the development and revision of IFSPs/IEPs:

    i. the parent(s);
    ii. for children 3-5, the agency representative who is designated by the regional site Board to commit funds and is qualified to provide or supervise the provision of services;
    iii. the child's teacher or service provider;
    iv. the Administrative Case Manager or Service Coordinator;

v. prospective service providers for the child, or, in the case where an IFSP/IEP is being developed or revised due to additional evaluations performed, a member of the evaluation team or the evaluator; and

vi. for children age 3-5, a regular education teacher if the child is, or may be, participating in the regular education environment.

Persons listed in Section VII. 2 (B)(i), (ii), (iii), (iv) and at least one individual listed in Section VII. 2 (B)(v) must be in attendance.

While a regular education teacher of a child age 3-5 must be a member of the ECT if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the meeting) be required to participate in all decisions made (for example, decisions about ISFP/IEP implementation for which the teacher is not responsible) as part of the meeting or be present for the entire meeting or attend every meeting; however, the regular education teacher who is an ECT member must participate in discussions and decisions about how to modify the general curriculum in the general classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment. In determining the extent of the regular education teacher's participation at ECT meetings, the CDS regional site and parents should try to reach agreement on whether the child's regular education teacher ECT member should be present at a particular meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the ECT to participate in ECT meetings must be decided on a case-by-case basis.

As described in Section VII.2 of this rule, the regular education teacher must meet the qualifications of Section XI.1(L) of this rule.

C. Alternative Methods of Participation for Evaluators and Service Providers- Periodic reviews of IFSPs/IEPs allow for alternative means of participation. Evaluators and service providers may participate in ECT meetings by means of the following alternative methods of participation:

i. telephone conference call at the time of the ECT meeting to allow direct dialogue with the parent;

ii. making pertinent reports available to the person convening the ECT in sufficient time for distribution of the report by the person convening the ECT to send to other members of the team prior to the meeting; or

iii. sending an authorized representative who is knowledgeable about the child (e.g., a physician sending the office nurse).

D. Other Participants - Other individuals such as other family members and advocates may attend and/or participate in ECT meetings at the discretion of the parent or the agency. For children age 3-5, these other individuals must have knowledge or special expertise regarding the child; the determination as to whether an individual has knowledge or special expertise, for purposes of participating in ECT meetings, must be made by the parent or CDS regional site who has invited the individual to participate in the ECT meeting. Also, child's primary care physician must be notified of the ECT meeting by the Administrative Case Manager and encouraged to participate.

3. PARENT PARTICIPATION

A. Opportunity to Participate - Regional site Boards shall ensure that one or both parents are present at each ECT meeting or afforded the opportunity to participate.

B. Parent Notification - Parents shall be notified in writing of the meeting early enough (or at least seven (7) days prior to the meeting, if prior notice is required per Section XII.3 of this rule) to ensure that they will have an opportunity to attend. The parents shall be consulted prior to the issuance of the notification to establish a mutually agreed upon time and place for the ECT meeting. The notice must include the purpose of the ECT meeting, time and location of the meeting and a list of those who are invited and/or planning to attend.

C. Alternative Meeting Methods - For children 3-5, if neither parent can attend, the regional site, with parents' consent, shall use alternative methods, such as telephone conference calls to ensure parent participation during the agreed upon meeting time. Such alternative methods must allow for dialogue between the parent, the person designated by the site to commit funds, the Administrative Case Manager if different from the site designated person, and at least one professional as indicated in Section VII.2.A(v) or B(v). The regional site Board shall ensure that the child's record includes information regarding the reasons why the alternative method of parent participation in the ECT meeting was necessary.

D. Parents' Refusal to Participate - **For children B-2, parents must attend and participate; refusal of parents to attend and participate is documented as refusing services.** For children 3-5, an ECT meeting may be conducted without parent participation if the person responsible for convening the ECT meeting is unable to convince the parents that they should participate. In this case, the regional site Board must ensure that the child's record includes documentation of the following:

i. detailed records of telephone calls made or attempted and the results of those phone calls;
ii. copies of correspondence sent to the parents and any responses received;
iii. detailed records of visits made to the parents' home or place of employment and the results of those visits; and
iv. a summary by the regional site Board or designee as to why it had concluded that the parents do not wish to participate.

E. Parents' Understanding of ECT Proceedings - The regional site Board is responsible for taking whatever action is necessary to ensure that the parents understand the proceedings at a meeting (and must make reasonable efforts to ensure that parents understand and can participate in group discussions relating to placement), including arranging for an interpreter for parents who are deaf or whose native language is other than English.

F. Parents' Record of Meeting - The regional site Board is responsible for ensuring that the parents are given a copy of minutes of the ECT meeting or, when an ECT meeting is held to develop, renew or revise an IFSP/IEP, a copy of the IFSP/IEP as a record documenting the ECT proceeding. Parents may audio or video record their child's ECT meeting at their own expense; however, video recording of an ECT meeting is permitted only if all ECT members consent to the video recording or when video recording is the most reasonable method of recording the meeting (e.g., for deaf parents). If the regional site Board audio or video records an ECT meeting, the recording becomes an educational record subject to Section XII.2 of this rule.

4. ECT MEETING DOCUMENTATION

A. The Regional site Board shall ensure that the following documentation related to ECT meetings is contained within the child's record:

i. name of person responsible for convening ECT meeting;
ii. copy of written notification to parent regarding the convening of the ECT and the date sent;
iii. date, time and location of the ECT meeting;
iv. list of persons and titles of individuals participating in the ECT;
v. method of participation for each person listed (i.e. attending, teleconference, report, representative);
vi. documentation outlined in Section VII.3 (C) regarding parent use of alternative participation method, if relevant;
vii. documentation outlined in Section VII.3 (D) regarding parent refusal to participate in ECT meeting, if relevant;
viii. documentation of ECT proceedings outlined in Section VII.3 (F), including the ECT recommendations and documentation of notice to parents of the right to informal and formal dispute resolution in accordance with Sections XII.7 and 8 of this rule, in the event that the parents and the CDS regional site are unable, at the ECT meeting, to reach an agreement regarding evaluation, services or placement.

VIII. ELIGIBILITY FOR SERVICES

1. ELIGIBILITY

As used in this document, children B-5 with disabilities means:

A. **for children B-2:**

  i. **developmental delays, as measured by both diagnostic instruments that are criterion-based or norm-referenced and appropriate procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development, with the delay being such that the child needs early intervention services; or**

  ii. **a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, with the condition being such that the child needs early intervention services;** and

B. for children age 3-5, evaluated in accordance with 34 Code of Federal Regulations (CFR) 300.530-534;

  i. significant developmental delays, as measured by both standardized, norm-referenced diagnostic instruments and appropriate procedures in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development; or

  ii. mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disability; orthopedic impairments; autism, traumatic brain injury; other health impairments; specific learning disabilities; deafness and blindness; or multiple disabilities, with the delay or impairment being such that the child needs special education and related services.

The reference to appropriate procedures, above, is to procedures conducted in accordance with evaluation protocol.

The determination of eligibility is made by an Early Childhood Team (ECT), including the parent(s) of the child, subsequent to evaluation utilizing multiple measures of assessment. These must include:

a. Parental report;
b. Informed clinical judgment by a qualified professional, including the use of interviews and observations; and
c. One or more standardized assessment measures (criterion-based or norm-referenced for children B-2; norm-referenced for children 3-5).

2. ELIGIBILITY CRITERION FOR CHILDREN B-2

A. DEVELOPMENTAL DELAY

Children age B-2 with a developmental delay have: (a) developmental delays, as measured by both diagnostic instruments that are criterion-based or norm-referenced and appropriate procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development, with the delay being such that the child needs early intervention services; or (b) a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, with the condition being such that the child needs early intervention services.

The reference to appropriate procedures, above, is to procedures conducted in accordance with evaluation protocol.

When using standardized measures as one of the three components of multiple measures of assessment in determining a developmental delay, an indication of developmental delay will be defined as any of the following (unless the measures used, such as hearing and vision tests, have different criteria for establishing abnormal development):

i. A delay of approximately 2.0 or more standard deviations below the mean in at least one of the above areas of development; or
ii. A delay of approximately 1.5 standard deviations below the mean in at least two of the above areas of development.

A standard deviation below the mean in any area of development is determined by means either of evaluation of the overall developmental area, or by means of evaluation of specific areas within any given developmental area.

The standard deviation criterion shall be used only as a guideline to assist in the identification of developmental delay and must be considered in conjunction with the other assessment methods described in this subsection.

When evaluating children age B-2 for developmental delay by means of criterion-based instruments, a delay of approximately 2.0 standard deviations below the mean, as referenced in (i), above, should be replaced by a delay of 25% or more below chronological age, and a delay of approximately 1.5 standard deviations below the mean, as referenced in (ii) above, should be replaced by a delay of 15% below chronological age.

When determining eligibility for children B-2 with diagnosed physical or mental conditions, each child's diagnostic evaluation must include a demonstration that the child is much more likely than not to have a developmental delay as described in A(i) or (ii), above with the condition being such that the child needs early intervention services.

3. ELIGIBILITY CRITERIA FOR CHILDREN 3-5

A. AUTISM

i. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as defined in Section VIII.3(E) of this rule.

ii. A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in the paragraph above are satisfied.

B. DEAF-BLINDNESS

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

C. DEAFNESS

Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

D. DEVELOPMENTAL DELAY

For children age 3-5, a determination of developmental delay is made by parents and qualified professionals on a multidisciplinary team, the Early Childhood Team (ECT). Children age 3-5 with a developmental delay have significant developmental delays in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development, as measured by both standardized, norm-referenced diagnostic instruments and appropriate procedures, with the delay or impairment being such that the child needs special education and related services.

Children age 3-5 who present a delay of less than 1.5 standard deviations in at least two areas of development may be identified as eligible if the other assessment methods described in this subsection indicate a significant developmental delay. The Administrative Case Manager or the Early Childhood Team shall recommend follow-up assessment for a child age 3-5 who presents a delay of between 1.0 and 1.5 standard deviations in at least two areas of development, as appropriate to determine if the delay becomes a significant developmental delay. For children age 3-5 who have a delay that is not determined to be a significant developmental delay, the Administrative Case Manager or the Early Childhood Team shall make a referral to programs outside the CDS system who may provide services to at-risk children or families.

The reference to appropriate procedures, above, is to procedures conducted in accordance with evaluation protocol.

When using standardized measures as one of the three components of multiple measures of assessment in determining a developmental delay, an indication of developmental delay will be defined as any of the following (unless the measures used, such as hearing and vision tests, have different criteria for establishing abnormal development):

i. A delay of approximately 2.0 or more standard deviations below the mean in at least one of the above areas of development; or
ii. A delay of approximately 1.5 standard deviations below the mean in at least two of the above areas of development.

A standard deviation below the mean in any area of development is determined by means either of evaluation of the overall developmental area, or by means of evaluation of specific areas within any given developmental area.

The standard deviation criterion shall be used only as a guideline to assist in the identification of developmental delay and must be considered in conjunction with the other assessment methods described in this subsection.

E. EMOTIONAL DISABILITY

Emotional disability is defined as follows:

i. The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance;

   a. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
   b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
   c. Inappropriate types of behavior or feelings under normal circumstances.
   d. A general pervasive mood of unhappiness or depression.
   e. A tendency to develop physical symptoms or fears associated with personal or school problems.

ii. The terms includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability.

F. HEARING IMPAIRMENT

Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

G. MENTAL RETARDATION

Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

H. MULTIPLE DISABILITIES

Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

I. ORTHOPEDIC IMPAIRMENT

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

J. OTHER HEALTH IMPAIRMENT

Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

i. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

ii. Adversely affects a child's educational performance.

K. SPECIFIC LEARNING DISABILITY

Specific learning disability is defined as follows:

i. General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

ii. Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disability, or of environmental, cultural, or economic disadvantage.

Since learning disabilities are commonly viewed in an academic context, the term "learning disabilities" typically is not used for children B-5 and the concerns are addressed as developmental delays, instead. However, if the child is being evaluated for specific learning disabilities, the requirements in Section VI.4(A)(i)-(iii) of this rule must be met.

L. SPEECH OR LANGUAGE IMPAIRMENT

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

M. TRAUMATIC BRAIN INJURY

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

N. VISUAL IMPAIRMENT

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

IX. INDIVIDUALIZED PLANS (IFSP/IEP)

1. IFSP/IEP COMPONENTS

Regional site Boards are responsible for coordinating, with eligible families, the development of an Individualized Family Service Plan (IFSP) that includes all federally required components of the Individualized Education Program (IEP), or an Individualized Education Program, if preferred by the parent of a child age 3-5.

Regional site Boards, through Service Coordinators, must ensure that all IFSPs/IEPs developed in their catchment area for children B-5, eligible for services, contain the following components:

A. A statement of the child's present level of functioning, including how the disability affects the child's participation in appropriate activities;
B. A statement of measurable, annual goals (outcomes), including short term objectives, with criteria, procedures and timelines for measuring progress toward the goals, the extent to which progress is sufficient to enable the child to achieve the goals by the end of the year, and the means of informing parents of progress at least as often as parents of nondisabled children are informed of their children's progress;
C. A list of the specific early intervention or special education and related services to be provided to the child, payment arrangements if any, and the extent to which the services will be provided in settings in which children without disabilities would participate, including the natural environments in which services are appropriately provided;
D. The projected dates of initiation of services and the location, frequency, intensity and anticipated duration of services, including whether services are provided on an individual or group basis; and services and modifications or supports for personnel that will be provided for the child to make progress on annual goals, participate in appropriate activities, including extra-curricular and non-academic activities and be educated and participate with other children with disabilities and nondisabled children, the projected date for the beginning of the services and modifications, and the anticipated frequency, location and duration of those services and modifications;
E. A statement of any individual modifications in the administration of State or district-wide assessments of achievement that are needed in order for the child to participate in such assessment; and if the ECT determines that the child will not participate in a particular State or district-wide assessment of achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the child; and how the child will be assessed;
F. A statement of any transition services needed for the child;
G. With the concurrence of the family, a statement about the family's resources, priorities, and concerns related to enhancing the development of the child and the role of the family in implementation of the IFSP/IEP;
H. To the extent appropriate, other service needs such as medical and social services the child needs, but that are not required under this part, and if necessary, the steps to secure those services through public or private resources;
I. On the initial IFSP/IEP, the signature of the parent, to indicate the informed and voluntary consent to the initial placement (services) of the child; and
J. The name of the service coordinator responsible for the implementation of the IFSP/IEP.

2. COMPLETION OF INITIAL IFSP/IEP

Initial IFSPs/IEPs for children B-2 must be completed within forty-five (45) days from the regional site Board's receipt of referral. Initial IFSPs/IEPs for children age 3-5 must be completed within sixty (60) days from the point a child has been referred for evaluation. For purposes of this rule, the word "day" refers to calendar day unless otherwise specified in the rule. An IFSP/IEP must be in effect before early intervention services are provided to a child.

3. IMPLEMENTATION OF IFSP/IEP

The IFSP/IEP is to be implemented as soon as possible after the IFSP/IEP is completed and the parent has signed the initial IFSP/IEP. **The IFSP for a child age B-2 is to be written on the basis of a twelve month program year, unless the ECT recommends that the duration of services be less than twelve months (e.g., center-based developmental therapy), based on the individual needs of the child.**

The IFSP/IEP for a child age 3-5 may provide for services throughout the year, provided that the ECT recommends those particular services are required to provide an appropriate program for the child. Extended school year (ESY) services are special education and related services that are provided to a child age 3-5 with a disability beyond the normal school year; they are provided in accordance with the child's IFSP/IEP at no cost to the parents and they meet the standards set forth in this rule. Regional site Boards must ensure that extended school year (ESY) services are available as necessary to provide children age 3-5 with FAPE, as determined by the ECT on an individual basis. Regional site Boards may not limit extended school year (ESY) services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. Eligibility for ESY services must be determined by particular service.

The need for the particular services is demonstrated by means of:

A. a review by the child's ECT of relevant information including but not limited to progress reports received in March, April, May or June, and any other relevant assessments, clinical judgment, parent report, observations or documentation;

B. consideration by the child's ECT of the significance of the discrepancy in the area of delay or disability between the child's chronological age and developmental age, progress toward IFSP/IEP goals and objectives, ability to meet annual goals without ESY services, and the impact of previous service interruptions on these three factors; and

C. consideration and documentation, in the child's IFSP/IEP, of the modifications and supports that have been tried or considered in the provision of this service, at the frequency, intensity and duration considered typical for the age of the child and that were rejected as inappropriate, and why.

If the ECT, after consideration of Section IX.3(A)-(C), above, determines that there is a high probability that the child would be unable to maintain current skills, or unable to meet annual IFSP/IEP goals without ESY services, the ECT may recommend ESY services at the appropriate frequency and intensity. If the ECT is unable to reach consensus regarding eligibility for ESY services, the ECT may recommend additional evaluations in order to determine the need for ESY services; in this case, the evaluation must be conducted by a provider who is not the child's provider of the service in question.

In accordance with Section VI.3(E) of this rule, any evaluation conducted within the preceding six (6) months is considered to be current and may be used for purposes of documenting the need for extended school year (ESY) services.

An interim IFSP/IEP may be developed for trial or evaluative placements or for provision of services prior to the completion of evaluation and assessment. Interim IFSPs/IEPs are subject to the same requirements as IFSPs/IEPs that are not implemented as interim IFSPs/IEPs; additionally the interim IFSP/IEP must include a reason for the interim IFSP/IEP.

4. DEVELOPMENT AND REVISION OF IFSP/IEP

Regional site Boards are responsible for developing and monitoring a system for the development, revision and renewal of the IFSP/IEP by an ECT.

All IFSPs must be reviewed every six months for children B-2, and at least yearly for children 3-5, to assess progress toward meeting short term objectives and continued appropriateness of services in the least restrictive environment as defined in Section II.23 of this rule. Reviews may be conducted more frequently, if warranted, or if the family requests a review, and may be carried out by a meeting or another means acceptable to the parents and other participants. An ECT meeting must be conducted on at least an annual basis to evaluate and, if necessary, revise the IFSP/IEP, and determine the child's placement on the basis of the IFSP/IEP.

The regional site Boards must indicate on the IFSP/IEP or through some other method the person responsible for the monitoring of the implementation of a child's IFSP/IEP and ensure that parents and providers are notified.

An ECT meeting must be held to consider any significant changes in an IFSP/IEP. A significant change may include, but is not limited to, the addition or deletion of a service or a change in the frequency, intensity, duration or setting of a service. A change in provider is not considered a significant change under this section of the rule.

5. LEAST RESTRICTIVE ENVIRONMENT

In selecting the least restrictive environment, as defined in Section II.23 of this rule, consideration is given to any potential harmful effect on the child or on the quality of services needed. Regional site Boards shall ensure that all services listed on a child's IFSP/IEP are provided in the least restrictive environment appropriate for that child and as close as possible to the child's home, and that a continuum of alternative placements including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions, is available to children with disabilities. Unless a child's IFSP/IEP requires some other arrangement, services must be provided to the child in the place or program the child would attend if the child did not have a disability, and supplementary services shall be provided in conjunction with regular class placement, where appropriate.

Further, regional site Boards must ensure, to the maximum extent appropriate, that children with disabilities receive services with children who do not have disabilities.

6. CONTINUUM OF ALTERNATIVE PLACEMENTS

Regional site Boards shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities and that the alternative placements, as well as supplementary services, are available to the extent necessary to implement the IFSP/IEP for each child with a disability.

7. TRANSITION OF CHILDREN AGE 2 AND AGE 5

The regional site Board is responsible for ensuring that all children age 2 who have been identified through the Childfind process as meeting the eligibility criteria for early intervention services have an ECT meeting, at least ninety (90) days prior to the child's third birthday, for the purpose of developing an IFSP/IEP for implementation at no cost to the family when the child turns age 3. The regional site Board is responsible for ensuring that all children age 5 being served by the regional site have transition ECT meetings with the receiving public school no later than spring of the year in which the child becomes eligible for public school.

8. PRIVATE SCHOOL PLACEMENTS

An IFSP/IEP will be developed and implemented for each child with a disability who is placed in or referred to a private school or facility by a public agency, or enrolled in a parochial school or other private school and receiving services from a public agency.

A. Prior to private school placement, the regional site Board will:

   i. initiate and conduct a meeting to develop an IFSP/IEP before referring a child to or placing a child in a private school or facility; and
   ii. ensure that representative of the private school facility attends the meeting. If the representative cannot attend, the regional site Board shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

B. After the child has been placed in the private school:

   i. any meetings to review and revise the child's IFSP/IEP may be initiated and conducted by the private school or facility at the discretion of the regional site Board; and
   ii. if the private school or facility initiates and conducts these meetings, the regional site Board shall ensure that the parents and an agency representative:

      a. are involved in any decision about the child's IFSP/IEP; and
      b. agree to any proposed changes in the program before those changes are implemented.

C. Even if a private school or facility implements a child's IFSP/IEP, responsibility for compliance with this part remains with the regional site Board and the State educational agency.

D. If a child with disabilities is enrolled in a private school or parochial school and receives services from a regional site, the regional site Board shall:

   i. initiate and conduct meetings to develop, review and revise an IFSP/IEP for the child; and
   ii. ensure participation of the private school representative in these meetings.

X. EARLY INTERVENTION AND SPECIAL EDUCATION AND RELATED SERVICES

1. ELIGIBILITY FOR SERVICES

Services are available to children, age B-5, who have been referred to a regional site, screened, evaluated or assessed at no cost to the family and determined by the ECT to have a disability as defined in this rule and to need early intervention services or special education and related services to benefit from early education and who have a completed Individualized Plan (IFSP/IEP) on which the service is specified. **Services are provided to children B-2 on the basis of a sliding fee scale; these are early intervention services.** Services are provided to eligible children 3-5 at no cost to the family; these are special education and related services.

2. DURATION AND LOCATION OF SERVICES

Eligible children and their families are entitled to receive services for the length of time specified on the IFSP/IEP by the ECT, for purposes of treating, correcting or ameliorating a child's physical, developmental or emotional problems. All IFSPs/IEPs must be reviewed, revised and renewed in accordance with the schedule set forth Section IX.4 of this rule.

ECTs must review and renew or develop revised IFSPs/IEPs before the expiration of existing IFSPs/IEPs. IFSPs/IEPs must be implemented as soon as possible following the ECT meeting. Initiation dates on the IFSP/IEP must reflect this review and renewal or revision for payment to be made. Sufficient time for the parent to review and discuss the IFSP/IEP should be provided, with ECT meetings scheduled in such a way as to avoid a lapse or unnecessary disruption in the delivery of services to eligible children. No payment may be made for services provided based on an invalid or expired IFSP/IEP.

Services must be provided in the least restrictive environment (LRE) that is appropriate to the child's needs.

3. SERVICES FOR ELIGIBLE CHILDREN

SERVICES FOR CHILDREN B-2 INCLUDE:

A. Assistive Technology

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

i. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

ii. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
iii. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
iv. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
v. Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and
vi. Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

B. Audiology

Audiology includes:

i. Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;
ii. Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;
iii. Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;
iv. Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;
v. Provision of services for prevention of hearing loss; and
vi. Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

C. Developmental Therapy/Special Instruction

Developmental therapy is special instruction designed to assist the child in meeting developmentally appropriate goals (or outcomes) and objectives established by the Early Childhood Team (ECT) to meet the unique needs of the child and includes providing the child and the child's family with information, skills, support, and planned interaction to enhance the child's development. The child must be present for payment for services to be made.

Developmental therapy may be provided in the home, a community-based special purpose program, or an inclusive program.

Developmental therapy is:

- i. **The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas;**
- ii. **Curriculum/treatment planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's IFSP.**
- iii. **Providing families with information, skills, and support related to enhancing the skill development of the child; and**
- iv. **Working with the child to enhance the child's development by achieving the outcomes in the IFSP.**
- v. **For purposes of compliance with this chapter, the appropriate frequency and intensity of center-based developmental therapy/special instruction for any child B-2 eligible for developmental therapy/special instruction is presumed to be no more than four (4) hours per week for children three (3) or more years prior to kindergarten.**

For purposes of compliance with this chapter, the appropriate frequency and intensity of home-based developmental therapy/special instruction for any child B-2 eligible for developmental therapy/special instruction is presumed to be no more than two (2) hours per week for children three (3) or more years prior to kindergarten.

In making recommendations for developmental therapy/special instruction, the ECT must consider the amount of time recommended for other services for the child, and the goals and objectives relative to those other services, in order to avoid duplication.

The presumption of the appropriate frequency, intensity or duration of developmental therapy/special instruction may be rebutted, in the case of any individual child, by an ECT decision based on the following:

- a. **An evaluation by a qualified evaluator who is not the child's provider of developmental therapy/special instruction, that includes a recommendation of a greater frequency, intensity or duration of developmental therapy/special instruction; and**
- b. **Documentation, in the child's IFSP, of the modifications and supports that have been tried or considered in the developmental therapy/special instruction program of the frequency, intensity or duration considered typical for the age of the child and rejected as inappropriate, and why.**

D. Family Training and Counseling

Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologist, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

E. Health Services

Health services means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

i. The term includes:

- **a. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and**
- **b. Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.**

ii. The term does not include the following:

- **a. Services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).**
- **b. Devices necessary to control or treat a medical condition.**
- **c. Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.**

F. Medical Services (only for diagnostic or evaluation purposes)

Medical services (only for diagnostic or evaluation purposes) means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

G. Nursing Services

Nursing services include:

- **i. The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;**
- **ii. Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and**

iii. Administration of medications, treatments, and regimens prescribed by a licensed physician.

H. Nutrition Services

Nutrition services include:

i. Conducting individual assessments in:

   a. Nutritional history and dietary intake;
   b. Anthropometric, biochemical, and clinical variables;
   c. Feeding skills and feeding problems; and
   d. Food habits and food preferences;

ii. Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings from individual nutritional assessments; and

iii. Making referrals to appropriate community resources to carry out nutritional goals.

I. Occupational Therapy

Occupational therapy includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:

i. Identification, assessment, and intervention;

ii. Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

iii. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

J. Physical Therapy

Physical therapy includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:

i. Screening, evaluation and assessment of infants and toddlers to identify movement dysfunction;

ii. Obtaining, interpreting and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

iii. Providing individual and group services or treatment to prevent, alleviate or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

K. Psychological Services

Psychological services include:

i. Administering psychological and developmental tests and other assessment procedures;

ii. Interpreting assessment results;

iii. Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

iv. Planning and managing a program of psychological services including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

L. Service Coordination

Service coordination services means the activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the services, rights and procedural safeguards authorized to be provided under the State's early intervention program.

M. Social Work

Social work services include:

i. Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

ii. Preparing a social or emotional developmental assessment of the child within the family context;

iii. Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

iv. Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services provided) that affect the child's maximum utilization of early intervention services; and

v. Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

N. Special Instruction (see Developmental Therapy)

Special instruction includes:

i. The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
ii. Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;
iii. Providing families with information, skills, and support related to enhancing the skill development of the child; and
iv. Working with the child to enhance the child's development.

O. Speech-Language Pathology Services

Speech-language pathology services include:

i. Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and
iii. Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

P. Transportation

Transportation and related costs includes the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

Q. Vision Services

Vision services means:

i. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities;
ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation or visual functioning disorders, or both; and
iii. Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

SERVICES FOR CHILDREN AGE 3-5 INCLUDE:

AA. Assistive Technology Devices and Services

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. Assistive technology services include:

i. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
ii. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
iii. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
iv. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
v. Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and
vi. Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of that child.

BB. Audiology

Audiology includes:

i. Identification of children with hearing loss;
ii. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
iii. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
iv. Creation and administration of programs for prevention of hearing loss;
v. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
vi. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

The regional site must ensure that hearing aids worn in programs by children with hearing impairments, including deafness, are functioning properly.

CC. Counseling Services

Counseling services means provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

DD. Developmental Therapy/Special Instruction/Special Education

Developmental therapy is special instruction designed to assist the child in meeting developmentally appropriate goals (or outcomes) and objectives established by the Early Childhood Team (ECT) to meet the unique needs of the child and includes providing the child and the child's family with information, skills, support, and planned interaction to enhance the child's development. The child must be present for payment for services to be made.

Developmental therapy may be provided in the home, a community-based special purpose program, or a mainstream program.

Developmental therapy is:

i. The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas;
ii. Curriculum/treatment planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's IFSP/IEP.
iii. Providing families with information, skills, and support related to enhancing the skill development of the child; and
iv. Working with the child to enhance the child's development by achieving the outcomes in the IFSP/IEP.
v. For purposes of compliance with this chapter, the appropriate frequency and intensity of center-based developmental

therapy/special instruction for any child 3-5 eligible for developmental therapy/special instruction is presumed to be as follows: no more than six (6) hours per week for children two (2) years prior to kindergarten; and no more than nine (9) hours per week for children one (1) year prior to kindergarten. In addition, the appropriate duration of center-based developmental therapy/special instruction for children age 3-5 is presumed to be no longer than the duration of the public school year.

For purposes of compliance with this chapter, the appropriate frequency and intensity of home-based developmental therapy/special instruction for any child eligible for developmental therapy/special instruction is presumed to be no more than five (5) hours per week for children 3-5.

In making recommendations for developmental therapy/special instruction, the ECT must consider the amount of time recommended for other services for the child, and the goals and objectives relative to those other services, in order to avoid duplication.

The presumption of the appropriate frequency, intensity or duration of developmental therapy/special instruction may be rebutted, in the case of any individual child, by an ECT decision based on the following:

a. An evaluation by a qualified evaluator who is not the child's provider of developmental therapy/special instruction, that includes a recommendation of a greater frequency, intensity or duration of developmental therapy/special instruction; and

b. Documentation, in the child's IFSP/IEP, of the modifications and supports that have been tried or considered in the developmental therapy/special instruction program of the frequency, intensity or duration considered typical for the age of the child and rejected as inappropriate, and why.

EE. Early Identification and Assessment

Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

FF. Medical Services

Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

GG. Occupational Therapy

Occupational therapy means services provided by a qualified occupational therapist; and includes:

i. Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

ii. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
iii. Preventing, through early intervention, initial or further impairment or loss of function.

HH. Orientation and Mobility Services

Orientation and mobility services means:

i. Services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in program, home and community; and
ii. Teaching children the following, as appropriate:

  a. Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
  b. To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
  c. To understand and use remaining vision and distance low vision aids; and
  d. Other concepts, techniques, and tools.

II. Parent Counseling and Training

Parent Counseling and Training means:

i. Assisting parents in understanding the special needs of their child;
ii. Providing parents with information about child development; and
iii. Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IFSP/IEP.

JJ. Physical Therapy

Physical Therapy means the evaluation, treatment and instruction of human beings to detect, assess, prevent, correct, alleviate and limit physical disability, bodily malfunction and pain from injury, disease and any other bodily condition.

KK. Psychological Services

Psychological services includes:

i. Administering psychological and educational tests, and other assessment procedures;
ii. Interpreting assessment results;
iii. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
iv. Consulting with other staff members in planning educational programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
v. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
vi. Assisting in developing positive behavioral intervention strategies.

LL. Recreation Services

Recreation Services include:

i. Assessment of leisure function;
ii. Therapeutic recreation services;
iii. Recreation programs in schools and community agencies; and
iv. Leisure education.

MM. School Health Services

School Health Services means services provided by a qualified school nurse or other qualified person.

NN. Service Coordination

Service Coordination services means assistance and services provided by a service coordinator, in the coordination of services and in the implementation of the child's IFSP/IEP.

OO. Social Work Services

Social work services in programs includes:

i. Preparing a social or developmental history on a child with a disability;
ii. Group and individual counseling with the child and family;
iii. Working in partnership with parents and others on those problems in a child's living situation (home, program, and community) that affect the child's adjustment in the child's program;

iv. Mobilizing program and community resources to enable the child to learn as effectively as possible in his or her educational program; and

v. Assisting in developing positive behavioral intervention strategies.

PP. Special Education (see also Developmental Therapy/Special Instruction)

i. As used in this part, the term special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

b. Instruction in physical education.

ii. The term includes each of the following, if it meets the requirements of paragraph (i) of this section:

a. Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

b. Travel training; and

c. Vocational education.

iii. The terms in this definition are defined as follows:

a. At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled children or their parents as a part of the regular education program.

b. Physical education means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in individual and group games and sports.

c. Specially-designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and

d. Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in program, in the home, at work, and in the community).

QQ. Speech-Language Pathology

Speech-language pathology services includes:

i. Identification of children with speech or language impairments;
ii. Diagnosis and appraisal of specific speech or language impairments;
iii. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
iv. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
v. Counseling and guidance or parents, children, and teachers regarding speech and language impairments.

RR. Transportation

Transportation includes:

i. Travel to and from program/services and between programs/services;
ii. Travel in and around program buildings; and
iii. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

4. SERVICES NOT PROVIDED

Services for which payment will not be made include, but are not limited to, the following:

A. Custodial Services

Any programs, services, or components of services of which the basic nature is to provide custodial care are not reimbursable by the Department. These non-covered services include foster care and child care.

B. Parent/Family Support Programs

Any programs, services or components of services of which the basic nature is to provide affective support for parents and/or siblings, such as recreational or discussion activities, e.g. "Parent to Parent", or parent or family counseling for needs unrelated to those of the child with the disability.

C. Other

i. Canceled or missed appointments.
ii. Services delivered that exceed the authorized frequency, intensity or duration as stated in the IFSP/IEP.
iii. Services provided by an unqualified facility or unqualified provider as defined in this rule.

5. SERVICES PAYMENT POLICIES

A. Professional and Other Qualified Staff

Payment for services, including collateral contacts as defined in Section II.5 of this rule, that are provided by individuals in accordance with this rule will be made in accordance with relevant provisions in Sections VI, X and XI of this rule.

B. Early Childhood Team (ECT) Participation

Providers may be paid for participation in ECT meetings. Payment will be made only when the provider is present at the meeting.

Payment for participation in ECT meetings is governed by policies developed by regional site Boards for their site. Payment is limited to time spent at the ECT meeting.

C. Individualized Plan (IFSP/IEP)

Payment for services described in this section shall not be made unless:

i. The ECT has convened;
ii. The service provider has participated in the ECT process in keeping with Department of Education rules;
iii. An Individualized Plan (IFSP/IEP) has been developed in accordance with Department of Education policies for Individualized Plans and includes the services for which reimbursement is being sought;
iv. Documentation approval is required from the Department for screenings, evaluation or assessment procedures that are performed out of State, in accordance with Section VI.7(A)(iii) of this rule.

D. Standards for Service

i. Participation with the ECT

Providers of services must participate in the ECT process, prior to the child's participation in the service, if appropriate, and once the child has initiated services. The ECT is responsible for reviewing evaluation results, determining a child's eligibility for services and developing an Individualized Plan with the family. Once the IFSP/IEP is implemented, the ECT must evaluate and renew or revise the Individualized Plan.

ii. Standards of Practice for Family Focused Early Intervention in Maine.

All providers of services are to be strongly encouraged by the regional Board to comply with the Standards of Practice for Family Focused Early Intervention in Maine.

The Certificate of Approval described in Section XI of this rule is awarded by the Department of Education upon demonstration of compliance with the Standards of Practice for Family Focused Early Intervention in Maine.

iii. Integration of Care Plans

Providers of services are responsible for integrating the goals and objectives that are listed on the IFSP/IEP into the their techniques and care plans, and adapting curricula and materials to changing individual needs and conditions. Specific documentation of application of IFSP/IEP goals and objectives is required for reimbursement.

E. Child Records

Regional site Boards must ensure that providers maintain a specific record for each child receiving services. Each record must include at least the following:

i. Child's name, address, birthdate
ii. Child's IFSP/IEP
iii. A personalized plan of service including:

    a. type of service needed;
    b. how the service will best be delivered and by whom;
    c. frequency and duration of service;
    d. long and short range goals and how they will be achieved; and
    e. plans for coordination with other health/social service agencies for the delivery of services.

iv. Written progress notes which include:

    a. identification of the nature of any service provided;
    b. time spent delivering the service;
    c. any progress toward the achievement of established long and short range goals;
    d. date of each service provided and signature of provider; and
    e. a full account of any unusual condition or unexpected event, including the date and time when it was observed and the name of the observer.

Entries in provider records are required for each date of service billed. When the services delivered vary from the IFSP/IEP, entries in the child's record must justify why more, less or different care was provided. Payment will be made only for services provided as specified in the IFSP/IEP. Provider records are subject to review for audit purposes. In the absence of complete progress notes, no payment will be made and payments previously made may be recovered.

Upon request, the provider will furnish to the Department of Education or its designee, without additional charge, the written progress notes, or copies thereof, corresponding to and substantiating services billed by that provider. Written progress notes, or copies thereof, and other pertinent information shall be transferred, upon request and with the parent's signed release of information, to other service providers involved in the child's program.

v. Signed parent consent forms as required.

F. Quality Assurance

i. Quality assurance for services will be provided by the Department of Education or its designee. The Department of Education or its designee is responsible for establishing, supporting and maintaining a quality assurance program that assures quality services.

The quality assurance program includes review of the following:

a. Child Records - semi-annual review of random selection of child records to assure record compliance, appropriateness of IFSPs/IEPs and proper utilization of services;

b. Personnel Credentials - review of proper documentation at the regional site of providers' licenses and certifications.

6. CONFIDENTIALITY

Providers shall maintain the confidentiality of information regarding children and families being served in accordance with the confidentiality procedures in the federal regulations under Part B of the federal I.D.E.A., 34 CFR 300.560-300.576, which incorporate by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy Act).

7. SERVICES PAYMENT PROCEDURES

A. Payment for services will be made by regional Boards in accordance with agreements between the regional Board and providers. Payment is for services listed in Section X of this rule that are authorized by, and delivered according to, an IFSP/IEP that has been certified for fund availability by designated regional site staff. Collateral contact must be listed as a service on the IFSP/IEP.

Payment for services by regional Boards will be based on Medicaid rates for comparable services and will be considered payment in full.

Regional Boards are responsible for ensuring that payment is made to qualified providers on the basis of required documentation.

B. Payment for services will be made by the regional site only upon receipt of an invoice. All bills for services must be submitted to the regional site within thirty (30) days of service delivery unless a third party is being billed. All bills for a given fiscal year must be received by August 15 following that fiscal year and must be accompanied by a list of all outstanding accounts on children served by CDS that are being billed to a third party. After August 15 following the fiscal year, only the bills relative to the listed accounts from the fiscal year just ended will be paid by the regional site, unless approved by the regional site Board. All bills for service must include:

i. Name of child and date of birth
ii. Date(s) of service
iii. Billing date
iv. Insurance payments received/filed/denied
v. Name of provider
vi. Provider employee identification number or social security number
vii. Type of service performed
viii. Usual and customary rate and established rate billed

ix. Number of units billed
x. Total amount due

Charges must be based upon the actual frequency of services provided and on the method of service (i.e., group/individual) listed on the IFSP/IEP. Payment by the regional Board will be made only upon receipt of an invoice from the provider. The regional Board will give providers thirty (30) days written notice in the event that relevant funding is discontinued for any reason.

Regional Boards are responsible for including notice of the payment procedures outlined in this subparagraph in Board agreements with providers.

C. Regional Boards must ensure that contracted providers of evaluations provide written summary reports of evaluations within fifteen (15) calendar days, and submit full reports of evaluations to the regional site within thirty (30) calendar days, of the evaluation.

D. Regional Boards must ensure that contracted providers submit, on a quarterly basis, progress reports on each child served, to document progress on the measurable goals and objectives specified in the child's IFSP/IEP.

E. Payment for services provided to eligible children B-2 that are subject to a sliding fee scale are governed by the Department of Education's sliding fee scale policy.

F. The Department of Education, after giving reasonable notice and an opportunity for hearing, may withhold funds from a regional Board of Directors or consider a finding of non-compliance in its review of a subsequent grant application, or both, when:

i. Payment is made to an unqualified provider; or
ii. Required documentation is insufficient or does not exist;
iii. Payment is made for services that are inconsistent with child's IFSP/IEP; or
iv. There is a failure to comply with any other requirement set forth in this rule, or in the approval agreement (or contract, if the Board is organized as a private non-profit corporation) between the Department and the regional Board.

8. THIRD PARTY LIABILITY

A. A third party is defined as any individual, insurance or program that would be or may be liable to pay for all or part of the cost of services but for the fact that the service is listed on the child's IFSP/IEP.

According to 20-A MRSA §7736, nothing within Chapter 307-A relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services. Free, appropriate public education must be ensured for all eligible children and their families through the following:

i. During the eligibility determination period (Childfind), the Administrative Case Manager will assess with the family the viability of utilization of existing third party insurance resources, including an examination of issues related to short- and long-term cost to the family and/or the eligible child.

   - a. the Administrative Case Manager will receive training from the Department of Education to ensure that the informing process is conducted in all situations, and is accurate and understandable.

ii. Parent approval or denial, in writing, to access third party resources will be obtained prior to completion of the IFSP/IEP.

iii. It is the obligation of the regional Board to ensure that all families within the catchment area receive continuous review and assistance in the utilization of their third party resources; and it is the obligation of the regional Board to terminate access or utilization of any family's third party resource for a covered service if this access is contrary to or in conflict with the principle of "at no cost" to the family.

iv. The "at no cost" principle includes, but is not limited to:

   - a. at no loss or reduction of health coverage for the family or, if the child has a separate policy from the family, the eligible child;
   - b. at no increase in the premium, deductible or other related costs to secure health coverage for the family or, if the child has a separate policy from the family, the eligible child;
   - c. at no reduction or elimination of the life-time benefits available to the family or, if the child has a separate policy from the family, the eligible child.

9. CARRYOVER FUNDS

A. After the fiscal year audit is complete, regional Boards will complete fourth quarter and year-to-date Budget Summary Allocation By Source Reports to compare the expenses reported to the Department against the audited final expenditures. When the audit expenditures differ from the fourth quarter reports submitted to the Department, the regional Board must amend the fourth quarter report and submit the amended report, with a copy of the fiscal year audit, to the Department.

B. Regional site Boards must report carryover funds to the Department of Education. The regional Board may submit an amended budget for review and approval by the Department; this amended budget must reflect line item utilization of the carryover funds, consistent with the obligations of the regional Board.

C. The Department of Education may request that carryover funds be returned to the Department.

XI. PROVIDER QUALIFICATIONS AND PARTICIPATION

The United States Department of Education standards, as reflected in the Individuals With Disabilities Education Act (I.D.E.A.), require that providers of early intervention services meet the "state's highest entry-level credential" under both Part C (B-2 year olds) and Part B, Section 619 (3-5 year olds). In Maine, existing licensure boards established within the Maine Department of Professional and Financial Regulation set these standards. Any individual providing developmental therapy/special instruction and who is not subject to the licensure requirements set forth by State licensing boards within the Maine Department of Professional and Financial Regulation, or does not have a certification or endorsement from the Maine Department of Education, must be temporarily certified by the Department of Education.

Any services provided to an eligible child as part of an Individualized Plan (IFSP/IEP) must be provided directly by a qualified provider.

A qualified individual or agency who performs the evaluation for initial eligibility on a given child may provide services to that child when it is determined by the regional Board to be in the best interest of the child, or necessary to meet compliance requirements or necessary to provide a specialized service that is otherwise unavailable. This determination may, at the discretion of the Board, be reflected in an agreement with the individual or agency providing the services.

1. QUALIFIED PROVIDERS

A. Audiology Services

Audiologist

An audiologist is an individual with a license in audiology from the Maine Department of Professional and Financial Regulation. This individual must, minimally, possess a Master's degree and must have passed a standardized exam known as the National Examination in Speech Pathology and Audiology.

B. Family Counseling Services

Licensed Clinical Social Worker (LCSW)

The licensed clinical social worker has a Master's of Social Work degree and is licensed to: practice social work (including psychosocial evaluation and diagnosis and treatment of mental illness and emotional disorders) in a clinical setting and engage in the clinical private practice of social work, subject to the restrictions set forth in Section XI.1(K) of this rule.

Clinical Psychologist

The clinical psychologist must have a current license from the Maine Department of Professional and Financial Regulation. This license requires a Doctoral degree in psychology which must include clinical exposure. After passing the examination of the Board of Examiners, the psychologist is licensed as a general practitioner for clinical psychological services.

Psychiatrist

A psychiatrist must be certified by the American Board of Psychiatry and Neurology, or be eligible for examination by the American Board as documented by written evidence from such Board, or have completed three years of post graduate training in psychiatry approved by the Educational Council of the American Medical Association and have written evidence of such training; and have current and valid licensure as a physician by the Maine Board of Licensure in Medicine or by the State or Province where services are provided.

Licensed Psychiatric Nurse

A psychiatric nurse must be licensed as a registered professional nurse by the Maine State Board of Nursing or by the State or Province where services are provided, and must either hold a Master's or higher degree in psychiatric or mental health nursing awarded from an accredited institution of higher learning or be certified by the American Nurses' Association as a psychiatric and mental health nurse, a clinical specialist in adult psychiatric and mental health nursing or a clinical specialist in child and adolescent psychiatric and mental health nursing.

Licensed Professional Counselor

A licensed professional counselor must be licensed by the Maine Board of Counseling Professionals Licensure and must have a Master's degree in counseling or an allied mental health field from an accredited institution or program approved by the board and two years experience, with a minimum of 2000 hours of supervised experience.

Licensed Clinical Professional Counselor

A licensed clinical professional counselor must be licensed by the Maine Board of Counseling Professionals Licensure and must have Master's degree in counseling or an allied mental health field from an accredited institution or program approved by the board and two years experience, with a minimum of 3000 hours supervised clinical experience with a minimum of 100 hours of personal supervision.

Licensed Marriage and Family Therapist

A licensed marriage and family therapist must be licensed by the Maine Board of Counseling Professionals Licensure and must have a Master's degree in counseling or an allied mental health field from an accredited institution or program approved by the board and two years experience, with a minimum of 1000 hours of direct clinical contact with couples and families and 200 hours of supervision, at least 100 of which shall be individual supervision.

C. Family Training

Family training services may be provided by those professionals qualified, within the scope of a professional license or certification, to provide any of the services listed in Section X of this rule.

D. Health Services

School Nurse (Registered Nurse or other qualified person)

A registered nurse is an individual with a license from the Maine State Board of Nursing.

E. Interpreter Services for Children Who Are Deaf or Hearing Impaired

i. An interpreter for a child who is deaf must be certified by the Registry of Interpreters for the Deaf. Others who function in interpreting capacity may be considered provisionally qualified if they are in the process of obtaining certification as evidenced by a training plan leading to a certification within five years.

An interpreter, who is in the process of obtaining certification, must be supervised:

a. at least one hour per child each month, by a supervisor certified by the Registry of Interpreters for the Deaf; and
b. monitored for progress toward completion of the professional development plan leading to interpreter certification.

ii. A cued speech transliterator must be certified by the National Cued Speech Association, Training, Evaluation and Certification Unit. Others who function in the transliterating capacity may be considered provisionally qualified if they are in the process of obtaining certification as evidenced by a training plan leading to certification within five years.

A cued speech transliterator who is the process of becoming certified shall be supervised:

a. at least one hour per child each month, by a supervisor certified by the National Cued Speech Association, Training Evaluation and Certification Unit; and
b. monitored for progress toward completion of the professional development plan.

F. Medical and **Nursing Services**

Physician

A physician is an individual with a Maine license to practice medicine either from the Maine Board of Licensure in Medicine or the Maine Board of Osteopaths.

Registered Nurse

A registered nurse is an individual with a license from the Maine State Board of Nursing.

G. Occupational Therapy

Occupational Therapist (OTR/L)

An occupational therapist is an individual with a license from the Maine Department of Professional and Financial Regulation. Current licensure requirements indicate that the occupational therapist must have completed a Bachelor's or Master's degree at an institution accredited by the Committee on Allied Health Education of the American Medical Association in collaboration with the American Occupational Therapy Association.

Occupational Therapy Assistant

An occupational therapy assistant is an individual with a two year degree in occupational therapy who has passed a standardized exam, is licensed by the Maine Department of Professional and Financial Regulation and practices under the supervision of an occupational therapist.

H. Physical Therapy

Physical Therapist (RPT)

A physical therapist is an individual with a license to perform physical therapy from the Maine Department of Professional and Financial Regulation. The physical therapist is required to have completed a Bachelor's degree prior to sitting for the board exam.

Physical Therapy Assistant

A physical therapist assistant is an individual with a two year degree in physical therapy who has passed a standardized exam, is licensed by the Maine Department of Professional and Financial Regulation and practices under the supervision of a physical therapist.

I. Psychological Services

Licensed Clinical Social Worker - See Section XI. 1(B) of this rule

Clinical Psychologist - See Section XI.1(B) of this rule

Psychological Examiner

This is a Master's-level professional whose specific services are diagnosis and testing. The individual must be licensed by the Maine Department of Professional and Financial Regulation. The psychological examiner may provide some intervention services such as consultation, behavior management or social skills training under the supervision of a licensed, Doctoral-level psychologist.

J. Service Coordination

Service coordinators must be persons who have demonstrated knowledge and understanding about: children eligible under this rule; the nature and scope of services available under the State's early intervention program; the system of payments for services in the State; and other pertinent information. Service coordinators are employed by regional site Boards, which are responsible for the implementation of the IFSP/IEP and for coordination with other agencies and persons, and for coordination with other services the child needs or being provided.

K. Social Work Services

Licensed Clinical Social Worker - See Section XI.1(B) of this rule

Licensed Master Social Worker (LMSW)

This licensed social worker has documented proof of a Master's of Social Work degree from an accredited educational institution and has successfully completed the examinations prescribed by the Board of Social Work Licensure, and is licensed to: perform all the functions of the LSW license; engage in administration, research, consultation, social planning and teaching related to the functions of social work; and engage in nonclinical private practice.

Licensed Social Worker (LSW)

The licensed social worker (LSW) is a professional social worker who has completed a Bachelor's degree from an accredited educational institution, has successfully completed the examinations prescribed by the Board of Social Work Licensure and is licensed to: gather and assess data on individuals and families to implement plans to achieve goals related to specific life issues; serve as an advocate for individuals or families for the purpose of achieving specific goals; refer to other services and coordinate social services; and participate in training and education in accordance with Board regulation.

Social work licenses (including conditional licenses as defined by the Board of Social Work Licensure) are subject to the following restrictions:

i. No social worker at any level may diagnose organic mental illness or treat any illness by organic therapy;
ii. No LMSW, LSW or any conditional levels thereof may engage in the private practice of clinical social work;
iii. No LMSW Conditional (Clinical) may diagnose or treat mental illness or emotional disorders without ongoing LCSW or CSW-IP consultation;
iv. No LMSW, LSW or LSW Conditional may engage in the diagnosis and treatment of mental illness and/or emotional disorders; and
v. No LSW or any conditional level thereof may engage in the private practice of social work.

Licensed Clinical Professional Counselor - See Section XI.1(B) of this rule

Licensed Professional Counselor - See Section XI.1(B) of this rule

L. Special Instruction/Developmental Therapy

Individuals, special purpose programs and mainstream programs may provide developmental therapy /special instruction. Any individual providing developmental therapy/special instruction and who is not subject to the licensure requirements set forth by State licensing boards within the Maine Department of Professional and Financial Regulation, or does not have a certification or endorsement from the Maine Department of Education, must be temporarily certified by the Department of Education.

M. Speech-Language Services

Speech-Language Pathologist

A speech-language pathologist is an individual who has a license in speech-language pathology from the Maine Department of Professional and Financial Regulation. This individual has a minimum of a Master's degree and has passed the National Examination in Speech-Language Pathology and Audiology.

Speech-Language Pathology Assistant

Registration must be granted to a person who meets the minimum qualifications for a speech-language pathology assistant established by the

Board of Examiners on Speech-Language Pathology and Audiology and who is supervised by a licensed speech-language pathologist, as set forth by the Board.

Speech-Language Pathology Aide

Registration may be granted to a person who meets the minimum qualifications established by the Board of Examiners on Speech-Language Pathology and Audiology for a speech-language pathology aide and who is supervised by a speech-language pathologist. A person holding this credential may continue to practice as a speech-language pathology aide until January 1, 2005. Any speech-language pathology aide registered after October 1, 1997, must demonstrate two years of post-secondary education and submit a training plan endorsed by a licensee. All speech-language pathology aides must meet the minimum qualifications for a speech-language pathology assistant adopted by the Board no later than January 1, 2005.

N. Transportation

Providers of transportation are required to have a valid driver's license, a vehicle with valid registration and insurance, and appropriate child safety restraints in the vehicle in keeping with Maine law.

O. **Vision**, and Orientation and Mobility, **Services**

Providers of vision services must have an endorsement, from the Department of Education's Division of Certification, as teachers of the blind and visually impaired. Providers of orientation and mobility services must have a Master's degree in orientation and mobility training.

2. PROVIDER QUALIFICATION VERIFICATION

A. Regional site Boards are responsible for ensuring that only those qualified providers listed in Section XI.1 of this rule provide the services required pursuant to a child's IFSP/IEP, and that providers have current licenses or certification.

B. Temporary Certificate of Approval

The Department of Education's Temporary Certificate of Approval for all providers of special instruction/developmental therapy, as referenced in Section XI.1(L) of this rule, is based on review of the applicant's resume and approval of the provider on the basis of criteria established by the Department of Education.

3. PROVIDER PARTICIPATION

A. Requirements of Provider Participation

Requirements for providers approved for participation include but are not limited to the following:

i. Notification to the regional site Board, in writing, immediately whenever there is a change in any of the information which the provider previously submitted to the regional site Board.

ii. Provision of services and supplies in full compliance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the grounds of race, color, or national origin and also without discrimination on the basis of religious beliefs, sex, or handicapping conditions.

iii. Provision of services and supplies in the same quality and mode of delivery as are provided to the general public.

iv. Charges for the provision of services and supplies in an amount not to exceed the provider's usual and customary charges to the general public.

v. Billing only for covered services and supplies delivered.

vi. Acceptance as payment in full the amounts established by the regional site Board for covered services.

vii. Maintenance and retention of financial and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided. For the purposes of this chapter, such records must be retained for a period of not less than five years from the date of service, or for such longer period as may meet other statutory requirements. If an audit is initiated within the required retention period, the records must be retained until an audit is completed and a cost settlement has been made.

Maintenance and retention of contracts with subcontractors for a period of at least five (5) after the expiration date of the contract. In addition, records of contractors or subcontractors shall be subject to the same record maintenance and retention rule as are all enrolled providers.

viii. Maintenance of child records that include but are not limited to:

a. identification of provider performing services billed;
b. date of service provided and ordered;
c. IFSP/IEP;
d. service or progress notes whenever services are provided; and
e. all other essential details of a child's disability, and of each service provided. All entries must be signed and dated by the person providing the service, and must be legible.

ix. Furnishing to the regional site Board, without charge, in the form and manner requested, pertinent information regarding services for which charges are made.

x. Compliance with requirements of applicable federal and state law and regulation.

B. Termination of Participation by Provider

Written notification of a provider's voluntary termination should be made to the regional Board, in accordance with the agreement made between the provider and the regional Board. It is the provider's responsibility to notify the regional Board of the voluntary termination of service provision, and arrange for the orderly transfer of records to the regional site Board.

4. SANCTIONS AGAINST PROVIDERS

A. Grounds for Sanctioning Providers

Sanctions must be imposed by the regional site Board against a provider for any one or more of the following reasons:

i. Presenting or causing to be presented for payment any false or fraudulent claim for services or merchandise.

ii. Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled (including charges in excess of the fee schedule or usual and customary charges).

iii. Submitting or causing to be submitted false information for the purpose of meeting prior authorization requirements.

iv. Failure to disclose or make available to the regional site Board records of services provided to eligible children and records of payments made thereof.

v. Failure to provide and maintain quality services to eligible children within accepted community standards.

vi. Engaging in a course of conduct or performing an act deemed improper or abuse of the provisions of this chapter as set forth or continuing such conduct following notification that said conduct should cease. Examples of such abusive acts include, but are not limited to, the following:

  a. the furnishing of services or supplies which are determined to be substantially in excess of the needs of, or harmful to, individuals, or to be grossly inferior in quality;

  b. the solicitation or acceptance from the family of an eligible child under this chapter of any amount over and above the reasonable charge amount or fee schedule for covered services; and

  c. separate schedule of charges for services to children eligible under this chapter and non-eligible children which results in higher charges for this population than non-eligible children.

vii. Breach of the requirements for provider participation, or failure to comply with the terms of the provider certification.

viii. Overutilizing the program by inducing, furnishing or otherwise causing a recipient to receive service(s) or merchandise not otherwise required or requested through the process.

ix. Rebating or accepting a fee or portion of a fee or charge for client referral.

x. Violating the applicable provision of any law governing programs covered under this chapter, or any rule or regulation promulgated pursuant thereto.

xi. Submission of a false or fraudulent application for provider status.

xii. Violation of any laws, regulations, or codes of ethics governing the conduct of occupations or professionals or regulated industries.

xiii. Conviction of a criminal offense relating to negligent practice resulting in death or injury, or misuse or misapplication of program funds.

xiv. Failure to meet standards required by State or federal law for participation.

xv. Documented practice of charging recipients of services a balance over and above the amount paid for those services by the regional site.

xvi. Failure to correct deficiencies in provider operations after receiving written notice of these deficiencies from the Department or its designee.

xvii. Formal reprimand or censure by an association of the provider's peers for unethical practices.

xviii. Suspension or termination from participation in another governmental program such as Worker's Compensation, Coordinated Care Services, Rehabilitation Services, Medicaid and Medicare.

xix. Indictment for fraudulent billing practices or negligent practice resulting in death or injury to the provider's clients.

xx. Failure to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.

B. Provider Fraud

i. Fraud includes intentional deception or misrepresentation, oral or written, which an individual knows to be false, or which the provider does not believe to be true, made with knowledge that this deception or misrepresentation could result in some unauthorized benefits to the provider or another person. The requisite intent is present if the misrepresentation was made knowingly or with a reckless disregard for the truth.

ii. Examples of conduct which could constitute fraud include, but are not limited to, the following:

a. billing for services, supplies, or equipment which were not rendered or used by the recipient;

b. claiming of costs for noncovered or nonchargeable services, supplies or equipment disguised as covered items;

c. material misrepresentations of dates and descriptions of services rendered, or of the identity of the recipient or the individual who rendered the service;

d. duplicate billing which appears to be deliberate. This includes billing twice for the same services, or billing both the regional site Board and the recipient for the same services;

    - e. persistently and deliberately billing recipients rather than the regional site Board for covered services; and
    - f. falsifying provider records in order to meet or continue to meet the conditions of participation.

C. Sanctions

The following sanctions may be invoked by the regional site Board against providers, on the basis of a finding of violation consistent with Section XI. 4(A) or 4(B) of this rule:

- i. Termination from participation in the program;
- ii. Suspension of participation in the program;
- iii. Suspension or withholding of payments to a provider;
- iv. Referral to peer review;
- v. Transfer to a closed-end Provider Agreement not to exceed twelve (12) months or the reduction of an already existing closed-end Provider Agreement;
- vi. Attendance at provider education sessions;
- vii. Prior authorizations of services;
- viii. One-hundred percent review of the provider's claims prior to payment;
- ix. Referral to State Licensing Board for investigation; and
- x. Recoupment of funds.

D. Notice of Violation

- i. Should the regional site Board have information that indicates that a provider may have or has been practicing in a manner that is fraudulent or otherwise in violation of program or other requirements, the regional site Board will notify the provider of the discrepancies noted. The written notification must be sent to the provider at least thirty (30) days before the effective date of any further action or imposition of sanction, and must set forth:
    - a. the nature of the discrepancies or violations;
    - b. the dollar value of such discrepancies or violations;
    - c. the method of computing such dollar value;
    - d. any further actions to be taken or sanctions to be imposed by the regional site Board; and
    - e. any actions required of the provider and his right to formal hearings.

E. Scope of Sanction

- i. A sanction may be applied to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the provider is affiliated where such conduct was accomplished within the course of official duty or was effectuated with the knowledge or approval of such person.

ii. Suspension or termination from participation of any provider will preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Department or its designee for any services or supplies provided under the program except for those services or supplies provided prior to the suspension or termination.

iii. No clinic, group, corporation or other association which is a provider of services may submit claims for payment to the regional site Board for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the program except for those services or supplies provided prior to the suspension or termination.

F. Notice of Sanction

i. When a provider has been sanctioned, the regional site Board must notify the Department and, if appropriate, the applicable professional society, board of registration or licensure, and federal or State agencies of the findings made and the sanctions imposed.

ii. Where a provider's participation in the program has been suspended or terminated, the regional site Board will endeavor to notify the recipients for whom the provider has submitted claims for services that such provider has been suspended or terminated.

5. PROVIDER APPEALS

A. Should a provider disagree with a decision made by the regional site Board, the provider may, within thirty (30) days of receipt of that decision, request in writing of the Department, or its designee, an informal review. The Department or its designee will conduct a review, utilizing individuals who were not involved in the decision under review, and make a written report to the provider of the decision resulting from that review.

B. If a provider is still dissatisfied with the decision, the provider may then write to the Commissioner of the Department of Education to request a hearing, provided the provider does so within thirty (30) days of receipt of the investigative report.

i. The Commissioner will, within thirty (30) days of receipt of the provider's timely and complete written request for a hearing, inform the provider in writing of the time and place of the hearing and will designate a hearing officer. The hearing will be held in conformity with the Maine Administrative Procedure Act, 5 MRSA §§ 8001 et seq. The hearing officer will make a recommendation to the Commissioner of the Department of Education who will make the final decision.

ii. If the provider is dissatisfied with the final decision of the Department, an appeal may be taken to Superior Court pursuant to the Maine Administrative Procedure Act.

XII. PROCEDURAL SAFEGUARDS

The regional site Board of Directors must ensure that the procedural safeguards required by this rule and applicable federal law are implemented to protect the rights of children and their families.

For purposes of this rule, the word "day" refers to calendar day unless otherwise specified in the rule.

1. COMMUNICATION OF PROCEDURAL SAFEGUARDS

A procedural safeguard statement, in substantially the following form, must be given by the CDS regional site to the parent upon initial referral for special education evaluation, upon each notice of an ECT meeting, upon request for parental consent for reevaluation of a child age 3-5 with a disability, and upon receipt of a request for a due process hearing.

A. Parental Participation

As the parent of a child who has or may have a disability, you are entitled to participate in meetings regarding your child's eligibility determination, initial evaluation or reevaluation, educational placement or provision of services.

B. Prior Notice to Parents

Your CDS regional site must provide you with a written notice a reasonable time (at least seven (7) days) before the site proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of services to the child.

If the CDS regional site is also required to have your written permission (consent) for an action, the CDS regional site may provide this notice to you at the same time it requests your consent.

The notice must include:

A description of the action proposed or refused by the CDS regional site, an explanation of why the CDS regional site proposes or refuses to take the action, and a description of any options the CDS regional site considered and the reasons why those options were rejected;

A description of each evaluation procedure, test, record, or report the site uses as a basis for the proposal or refusal;

A description of any other factors which are relevant to the CDS regional site's proposal or refusal; and

A statement that you have the rights contained within this notice and where you may obtain a copy of this notice.

The notice must be written in language understandable to the general public. The notice must be provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If you native language or other mode of communication is not a written language, the CDS regional site must take steps to ensure that the notice is translated orally or by other means to you in your native language or other mode of communication, that you understand the content of the notice, and that there is written evidence that these requirements have been met.

Sources you may contact for assistance in understanding your rights include the Special Needs Parents Information Network (1-800-870-7746) and Southern Maine Parent Awareness (1-800-564-9696).

You may file a complaint with the Maine Department of Education if you believe the CDS regional site has violated a requirement under this rule.

C. Parent Consent

Your CDS regional site must obtain your written permission (consent) before conducting an initial evaluation, before an initial placement of your child in a program providing services or before conducting any new test as part of a reevaluation of your child age 3-5. Except for initial evaluation, initial placement, and reevaluation for children age 3-5, your permission may not be required as a condition for providing any special education or supportive services to you or your child.

If you refuse to provide your permission (consent) for an initial evaluation or initial placement of your child in services, your CDS regional site may use the due process hearing or mediation procedures to determine whether your child may be evaluated or initially provided services without your consent. If the hearing officer orders the CDS regional site to evaluate or place your child or if you and the CDS regional site reach a mediated agreement, the CDS regional site may evaluate your child or provide services to your child.

Generally, either parent may grant consent. In the case of divorced parents with joint custody either parent may grant consent. However, in the event that one parent grants consent and the other parent refuses, then the CDS regional site is obligated to initiate the action for which consent has been granted.

D. Evaluation/Reevaluation

The Early Childhood Team (ECT), of which you are a member, may decide that no additional information is needed to determine your child's initial or continuing eligibility for services. If you disagree with the team's decision, you may request that the CDS regional site conduct an assessment of your child. If you child has a disability and has been receiving services, the CDS regional site must evaluate your child before determining that your child no longer requires services.

E. Parental Consent for Reevaluation of Children Age 3-5

For children age 3-5, the CDS regional site must obtain your written consent before conducting a reevaluation of your child. However, if the CDS regional site can show that it tried to get your consent for the reevaluation of your child and you did not respond, then the CDS regional site may reevaluate your child without your consent. Your consent is not required to review existing evaluation information.

F. Independent Educational Evaluation

An independent evaluation is an evaluation conducted by a qualified person who is not an employee of the CDS regional site. You have the right to an independent educational evaluation at no cost to you if you disagree with an evaluation obtained by your CDS regional site. However, your CDS regional site may initiate a due process hearing to show that its evaluation is appropriate. If the hearing decision is that the CDS regional site's evaluation is appropriate, you still have the right to an *independent educational evaluation, but at your expense. If you obtain an* independent educational evaluation at your expense, the results of the evaluation must be considered by your CDS regional site in any decision made with respect to the provision of an appropriate education to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be a public expense.

Your CDS regional site shall provide you, when you request it, information about where an independent educational evaluation may be obtained.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the CDS regional site uses when it initiates an evaluation. A CDS regional site may not impose any additional criteria regarding an independent educational evaluation.

G. CDS Regional Board of Directors Complaints

You have the right to file a written complaint with the Board of Directors of the CDS regional site responsible for the education of your son or daughter if you have reason to believe that the CDS regional site is not in compliance with these regulations. The Board, or a designee, shall then appoint a person to investigate your complaint and to recommend to the Board, within thirty (30) days of the receipt of the written complaint, any corrective action necessary to resolve your complaint.

H. Department of Education Complaints

You have the right to file a signed, written complaint with the Commissioner of the Department of Education if you have reason to believe that the CDS regional site responsible for the education of your son or daughter is not in compliance with these regulations or if you disagree with the results of a CDS Board of Directors' complaint investigation.

The Department shall initiate and complete, within sixty (60) days of the receipt of the written complaint, an investigation and a determination of whether your regional site Board has complied with these regulations.

I. Mediation

You or the CDS regional site have the right to request the Department of Education to provide mediation services if you and the CDS regional site are unable to agree upon the identification, evaluation, educational program, placement or the provision of an appropriate education to your child.

The mediation must be voluntary on the part of both you and the CDS regional site. Mediation may not be used to delay or deny your right to a due process hearing. The mediation must be conducted by a qualified and impartial mediator at no cost to you or the CDS regional site. The mediation will be held in a timely manner and at a location that is convenient to you and the CDS regional site. Any agreement reached in mediation will be put into writing and becomes a part of your child's

IFSP/IEP. If the CDS regional site fails to implement the mediation agreement you may initiate a hearing or file a complaint against the CDS regional site. Mediation discussions are confidential and may not be used as evidence in a hearing. You and the CDS regional site may be required to sign a confidentiality pledge prior to the start of the mediation.

If you chose not to participate in a mediation, the Maine Department of Education may require you to meet with a third party who will explain the benefits of the mediation process to you. If you would like to request a mediation or would like more information about mediation, you may contact the Maine Department of Education, Special Services Team at 287-5950.

J. Impartial Due Process Hearing

You or your CDS regional site may initiate a hearing regarding the CDS regional site's proposal or refusal to initiate or change the identification, evaluation or educational placement of your child or the provision of appropriate education services to your child.

You must send your written request for a due process hearing to the Maine Department of Education. The request must contain the name of the child, the child's residence, the CDS regional site the child is attending, a description of the problem and facts relating to the problem, and a proposed solution to the problem.

A form is available from the Maine Department of Education, your local CDS regional site, or the Special Needs Parent Information Network (SPIN). Failure to provide the required information may result in a reduction of the award of any attorneys' fees if you win your case.

The hearing will be conducted by an impartial hearing officer appointed by the Department and contracted to provide hearing officer services.

The Department must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or your CDS regional site initiate a due process hearing.

A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department of Education to serve as a hearing officer.)

The Department maintains a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons.

The Department shall ensure that a final hearing decision is reached and mailed to the parents of the CDS regional site within forty-five (45) days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

The decision made in a due process hearing is final, unless you or the CDS regional site brings a civil action under the procedures described below.

K. Due Process Hearing Rights

Any party to a hearing has the right to:

i. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
ii. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
iii. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
iv. Obtain a written or electronic verbatim record of the hearing; and
v. Obtain written findings of fact and decisions. (After deleting any personally identifiable information, the Department shall transmit those findings and decisions to the State advisory panel and make them available to the public.)

As the parent, you have the following additional rights:

You may have your child present at the hearing;

You may open the hearing to the public; and

You may obtain the findings of fact, decision and record of the hearing at no cost to you.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

L. Civil Action

Any party aggrieved by the findings and decision made in a hearing has the right to appeal the decision in State or Federal Court.

M. Child's Status During Due Process Proceedings

During the pendency of any complaint investigation, mediation, or due process hearing or appeal of a hearing, unless you and your CDS regional site agree otherwise, your child must remain in his or her present educational placement and program.

If the hearing involves an application for initial admission to CDS services, your child, with your consent, must be placed in the services recommended by the CDS regional site until the completion of all the proceedings.

N. Award of Attorneys' Fees (for Children Age 3-5)

For children age 3-5, you may request either a State or federal court to award reasonable attorneys' fees and costs if you win your hearing either through a settlement or a hearing decision.

Attorneys' fees may not be awarded relating to any meeting of the Early Childhood Team unless the meeting occurs as a result of an order of a hearing officer or a judge. Attorneys' fees may not be awarded for a mediation.

The award of attorneys' fees may be reduced if you unreasonably delayed the settlement or decision in the case, the time spent and services furnished were excessive or the fees charged by your attorney exceed reasonable rates.

O. Each CDS regional site shall ensure that an individual is assigned to act as a surrogate for the parents of a child when no parent can be identified; the CDS regional site, after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the State. The Department must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The Department may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of an agency which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as an agency employee from appointment as a surrogate solely because he or she is paid by the Department to serve as a surrogate parent.)

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of services for children age 3-5 to the child.

P. Disciplinary Procedures for Children Age 3-5

If your child, age 3-5, has violated the program's disciplinary standards, program personnel may remove your child from his or her current educational setting for not more than ten (10) consecutive program days or ten (10) days cumulatively within a program year, to the extent removal would be applied to children without disabilities.

After a child with a disability has been removed from his or her current placement for more than ten (10) program days in the same year, during any subsequent days of removal the CDS regional site must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum (or appropriate activities) and appropriately advance toward achieving the goals set out in the child's IFSP/IEP.

The CDS regional site may place your child in an interim alternative education setting for up to forty-five (45) days if your child possesses or uses illegal drugs or carries a weapon to the program or a program function.

If the CDS regional site wants to change your child's placement for more than ten (10) program days, you have the right to participate in the manifestation determination meeting. This meeting determines whether the behavior was or was not related to your child's disability.

If the determination is made that the behavior is related to your child's disability then your child may not be suspended, expelled or removed from his or her current educational placement for more than ten (10) program days (except in the case of weapons or drugs) unless the ECT develops a new IFSP/IEP and decides upon a new placement. If there is no relationship between your child's disability and the behavior, then your child may be disciplined as any other child. During any removal in excess of ten (10) days, the CDS regional site shall provide your child with special education and related services to the extent necessary to enable your child to appropriately progress in the general curriculum (or appropriate activities) and appropriately advanced toward achieving the goals set out in your child's IFSP/IEP.

If you disagree with the manifestation determination, the decision to place your child in an interim alternative education setting or any other disciplinary placement, you have the right to request a hearing or an expedited due process hearing.

Q. Child's Placement During the Pendency of Due Process Procedures—Disciplinary Action

Generally, if you initiate a due process hearing, your child will remain in his or her current educational placement until a final decision has been reached or you and the CDS regional site agree upon another placement. However, in cases where your child, age 3-5, has been placed in an interim alternative education setting because of a disciplinary action, your child may remain in the interim alternative education setting for a period not to exceed ten (10) days (or forty-five (45) days for a weapon or drug related offence). Thereafter, your child will return to the previously agreed upon educational placement unless either a hearing officer orders another placement or you and the CDS regional site agree to another placement.

R. Private Placements by Parents

The CDS regional site may be required to reimburse the costs of a placement you make if you can prove at a due process hearing that the CDS regional site has failed or is unable to provide your child with an appropriate program and that the placement you choose is appropriate.

If you plan to place your child with a disability and seek reimbursement from the CDS regional site, you must inform the CDS regional site at an ECT meeting or provide the CDS regional site with written notice at least ten (10) business days (excluding weekends) prior to the enrollment of your child in the placement you choose. You must inform the CDS regional site about your disagreement with the CDS regional site's IFSP/IEP, the placement proposed by the CDS regional site, your intention to enroll your child in a different placement and your intention to request reimbursement.

If the CDS regional site has provided you with a written notice that the CDS regional site intends to evaluate your child before you remove your child from the CDS regional site, you must make your child available to the CDS regional site for evaluation.

A court or hearing officer could decide to reduce or deny reimbursement for the placement you choose if you fail to inform the CDS regional site of your intention to make placement yourself at public expense, fail to make your child available for evaluation, or take other unreasonable actions.

S. Access to Records

Your CDS regional site must permit you to inspect and review all education records relating to you child with respect to the identification, evaluation, and educational placement of your child, and the provision of an appropriate program to your child, which are collected, maintained, or used by the CDS regional site. The CDS regional site must comply with a request without unnecessary delay and before any meeting regarding an IFSP/IEP, or hearing related to the identification, evaluation, placement or provision of appropriate services to your child, and in no case more than forty-five (45) days after the request has been made.

Your right to inspect and review education records under this section includes:

i. The right to a response from the participating CDS regional site to reasonable requests for explanations and interpretations of the records;
ii. Your right to have your representative inspect and review the records; and
iii. Your right to request that the CDS regional site provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The CDS regional site may presume that you have authority to inspect and review records relating to your child unless the CDS regional site has been advised that you do not have the authority under applicable Maine law governing such matters as guardianship, separation, and divorce.

The CDS regional site must keep a record of who (other than authorized employees of the CDS regional site and the parent) has had access to your child's records, including the person's name, date, and purpose of the access.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The CDS regional site must provide you on request a list of the types and locations of education records collected, maintained, or used by the CDS regional site.

T. Fees for Searching, Retrieving, and Copying Records

The CDS regional site may not charge a fee to search for or to retrieve information under this section, but may charge you a fee for copies of records which are made for you under this rule if the fee does not effectively prevent you from exercising your right to inspect and review those records.

U. Record of Access

The CDS regional site must keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees of the participating CDS regional site), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

V. Amendment of Records at Parent's Request

If you believe that information in education records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of your child, you may request the CDS regional site that maintains the information to amend the information.

The CDS regional site must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the CDS regional site decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The CDS regional site shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

If, as a result of the hearing, the CDS regional site decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the CDS regional site decides that the information is not accurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons you disagree with the decision of the CDS regional site. Any explanation placed in your child's records under this section must be maintained by the CDS regional site as part of the records of your child as long as the record or contested portion is maintained by the CDS regional site; if the records of your child or the contested portion is disclosed by the CDS regional site, the explanation must also be disclosed to the party.

W. Definitions

"Consent" means that: (a) You have been fully informed of all information relevant to the activity for which consent is sought, in your native language or other mode of communication; (b) You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and you understand that the granting of consent is voluntary on your part and may be revoked at any time.

"Evaluation" means procedures used in accordance with these rules to determine whether a child has a disability and the nature and extent of the services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a CDS regional site, grade, or class or program.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the CDS regional site responsible for the education of the child in question. "Independent educational evaluation at a public expense" means that the CDS regional site either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to you.

2. RECORDS

A. Each regional site Board of Directors must adopt and implement procedures to protect the confidentiality of records of the children served, in accordance with the federal Family Educational Rights and Privacy Act (FERPA) of 1974 and the Education of All Handicapped Children Act of 1975 (now the Individuals with Disabilities Education Act or I.D.E.A.). NOTE: Copies of the Family Educational Rights and Privacy Act and the Education of All Handicapped Children Act (now the Individuals with Disabilities Education Act or I.D.E.A.) are available from the Department of Education.

In accordance with the confidentiality procedures in the federal regulations under Part B (incorporated by reference at Part C, 34 CFR 303.460) of the federal I.D.E.A., 34 CFR 300.560-300.576, the parents of an eligible child must be afforded the opportunity to review records relating to evaluations and assessments, eligibility determination, development and implementation of IFSPs/IEP, individual complaints dealing with the child, and any other area under this rule involving records concerning the child and family.

B. Access Rights

The regional site Board of Directors must permit parents, or their authorized representative, to inspect and review any records relating to their child which are collected, maintained or used by the CDS regional site under these regulations. The regional site Board of Directors must comply with a request for access without unnecessary delay and before any meeting regarding an IFSP/IEP or any due process hearing relating to the identification, evaluation, or placement of the child, and in no case more than forty-five (45) days after the request has been made.

The right to inspect and review records under this section includes:

i. The right to a timely response from the regional site Board of Directors to reasonable requests for explanations and interpretations of the records;
ii. The right to copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;
iii. The right to have a representative of the parents inspect and review the records; and
iv. The right to a list of the types and locations of records collected, maintained, or used by the regional site Board.

C. Consent

Consent of the parent must be obtained in writing before personally identifiable information is disclosed or used for any purpose other than meeting the requirements of State and federal law governing Childfind and the provision of early intervention services, except as noted below.

The written consent required by this section must be signed and dated by the parent giving consent and must include:

i. A specification of the records which may be disclosed;
ii. The purpose(s) of the disclosure(s); and
iii. The party or parties to whom the disclosure(s) may be made.

The regional site Board of Directors may disclose records without parental consent in accordance with FERPA.

D. Record of Access

Each regional site Board of Directors shall keep a record of parties who have obtained access to records (except for access by parents and authorized employees of the CDS regional site). The record must include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records and must be maintained with the records.

E. Records on More Than One Child

If any regional site record includes information on more than one child, the parents of a child have the right to inspect and review only the information relating to their child or to be informed of that specific information.

F. Fees

A regional site Board of Directors may, based on regional policy, charge a reasonable fee for copies of records provided to parents under this rule. The fee must not prevent the parents from effectively exercising their right to inspect and review those records.

A regional site Board may not charge a fee to search for or to retrieve information governed by FERPA.

G. Amendment of Records at Parental Request

i. Request to amend records - A parent may request that a regional site Board of Directors amend records that the parent believes to be inaccurate, misleading or in violation of the privacy or other rights of a child.

The regional site Board of Directors must, within fifteen (15) days of receipt of the request, either amend the information in accordance with the parent's request or inform the parents of its refusal to amend the information and advise the parent of the opportunity for a hearing.

ii. Opportunity for a hearing - The regional site Board of Directors must, upon request, provide a hearing in which the parent may challenge information in records.

The hearing must be conducted according to the procedures specified in the regulations implementing FERPA.

iii. Result of hearing - If the hearing officer decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the regional site Board of Directors must amend the information accordingly and so inform the parent in writing.

If the hearing officer decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the hearing officer will inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the regional site Board of Directors in the child's records.

Any explanation placed in the record of the child under this section must:

a. be maintained by the regional site Board of Directors as part of the records of the child as long as the record or contested portion is maintained at the CDS regional site; and
b. be disclosed to any party to whom the record is disclosed.

H. Safeguards

Each regional site Board of Directors must protect the confidentiality of records at collection, storage, disclosure, and destruction stages.

The regional site Board of Directors must appoint an individual to be responsible for ensuring the confidentiality of records and training other staff.

All persons collecting or using personally identifiable information must receive treatment or instruction regarding the federal law, state and local policies and procedures for ensuring confidentiality.

Each regional site Board of Directors must maintain, for public inspection, a current listing of the names and positions of those employees at the CDS regional site who may have access to records.

I. Destruction of Information

The regional site Board of Directors must inform parents when records are no longer needed to provide services to the child. Such records must be destroyed at the request of the parents and may be destroyed at any time by the regional site Board of Directors or they may be turned over to parents upon their request. However, a permanent record of a child's name, address and phone number must be maintained without time limitations.

Documentation of records transferred to other regional CDS sites or to receiving public CDS regional sites must be maintained without time limitations.

NOTE: Records pertaining to children with disabilities may be useful in the future to the child or parents if application is made for federal benefits.

3. PRIOR WRITTEN NOTICE

A. The regional site Board of Directors must ensure that the parents of the child receive adequate written notice at least seven (7) days prior to the effective date of any proposal or refusal to initiate or change the identification, evaluation, provision of services or placement for the child and the child's family.

B. The notice of any proposed or refused action must contain information in sufficient detail to inform the parents about:

i. The action that is being proposed or refused;
ii. A description of each evaluation procedure, test, record or report on which the action is based;
iii. A description of any options the agency considered and the reasons why those options were rejected;
iv. A description of any other factors relevant to the action;
v. The reasons for taking the action;
vi. All procedural safeguards that are available under 34 CFR Part B and Part C, as outlined in Section XII of this rule; and
vii. Sources for parents to contact to obtain assistance in understanding procedural safeguards.

C. The notice must be provided in the language commonly used in the home of the parents. If the regional site Board of Directors has reason to believe that the parent is not literate or if the native language is not a written language, the regional site Board of Directors must take appropriate steps to ensure that:

i. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
ii. The parent understands the content of the notice; and
iii. There is written evidence that these notice requirements have been met.

D. If the parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent such as sign language, Braille, or oral communication.

When the parent waives the right to prior written notice provided at least seven (7) days prior to the effective date of the proposal or refusal, the regional site Board must file a written waiver signed by the parent in the child's record.

4. INFORMED PARENTAL CONSENT

A. Informed written parental consent is required before conducting the initial evaluation and assessment of the child, before reevaluation of children age 3-5 and before initiating the provision of services. Consent is intended to:

i. Assure the parent that all information has been shared, in the parent's native language or other mode of communication, that is relevant to the activity for which the consent is requested;

ii. Ensure that the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and provide a description of that activity, along with a list of records which will be released and to whom; and

iii. Assure the parent that granting of consent is voluntary and may be revoked at any time, **and ensure that parents of children, B-2, understand that they may consent to some services and not others.**

B. If consent is not given, the regional site Board of Directors must make reasonable efforts to ensure that:

i. The parent is fully aware of the nature of the evaluation and assessment or of the services that would be available;

ii. The parent understands that the child will not be able to receive the evaluation and assessment or services unless consent is given; and

iii. Written documentation of the parent's failure to consent is kept as part of the child's record.

Refusal to grant consent: If the parents of a child with a disability refuse consent for initial evaluation or reevaluation, the site may use the mediation or hearing procedures described in Sections XII.7 and 8 of this rule to secure parental consent.

Withdrawal of Parental Consent: A withdrawal of parental consent after the initial evaluation or initial placement in services shall be considered a request to change the child's program and placement. As such the ECT shall convene and consider the parent's request. If the ECT disagrees with the parent's request, the site may use the mediation process or initiate a hearing to override the parent's withdrawal of consent.

Failure to respond to request for reevaluation: Informed parental consent prior to reevaluation of children age 3-5 need not be obtained if the site can demonstrate that it has taken reasonable measure to obtain such consent and the child's parents have failed to respond.

Limitation: A site may not require parental consent as a condition for the receipt of special education services except for the initial evaluation, initial placement in special education and reevaluation. **Parents of children B-2 may consent to some services and not to others.**

5. SURROGATE PARENTS

A. The regional site Board of Directors must ensure the rights of children eligible under this rule are protected if:

i. No parent can be identified;

ii. The regional site Board of Directors or other service provider cannot, after reasonable efforts, identify the whereabouts of a parent; or

iii. The child is a ward of the State of Maine.

B. Whenever the biological parent, or legal guardian or person acting as parent of the child cannot be identified or located after reasonable efforts, the regional site Board of Directors will be notified and will, in turn, inform the Commissioner, who makes recommendations concerning candidates for the responsibility and request the appointment of a surrogate parent.

Whenever a child, age B-5 with disabilities, is a State ward residing in a foster home licensed by the Department of Human Services, the foster parent will be recognized as the surrogate parent for the child placed in his/her care. There is no need for the Commissioner to appoint the foster parent of a State ward.

C. The regional site Board of Directors must ensure that any person selected as a surrogate parent:

i. Has no interests that conflict with the interests of the child being represented;

ii. Has sufficient knowledge and skill to ensure adequate representation of the child; and

iii. Is not an employee of a public agency involved in the provision of services to or care of the child; a person who otherwise qualifies to be surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. The term "public agency" includes the Department of Mental Health, Mental Retardation and Substance Abuse Services and the regional site responsible for providing services to the child.

D. The surrogate parent may represent a child in all matters relating to:

i. The evaluation and assessment of the child;

ii. Determination of eligibility and development and implementation of the child's IFSP, including services, placement, annual evaluations and periodic review of the IFSP/IEP;

iii. The ongoing provision of services to the child; and

iv. Any other rights under I.D.E.A.

The representative of the Maine Department of Human Services for a State ward may have access to records and participate in ECT meetings but may not exercise the procedural safeguards under this rule.

6. INDEPENDENT EDUCATIONAL EVALUATION

The parents of a child, 3-5, with disabilities or referred to the ECT for identification have the right to obtain, at no cost to the family, an independent evaluation of their child if the parents disagree with the results of an evaluation conducted or obtained by the regional site.

An independent educational evaluation (regardless of whether it is obtained at public expense) must be performed by an appropriately qualified professional, as defined by this rule, who is not an employee of the regional site and who is qualified to provide such educational evaluations.

Qualified individuals in private practice under contract with a regional site Board of Directors who have not previously evaluated, instructed or provided consultation regarding a particular child are eligible to provide an independent educational evaluation of the child.

The regional site Board of Directors must either grant the request for an independent educational evaluation conducted at its expense, pay for the evaluation obtained by the parents, or initiate a due process hearing.

Upon receipt of a written parental request for an independent educational evaluation, the regional site Board of Directors must provide the parent with a written response within thirty (30) days of the receipt of the request and provide the parent with information regarding allowable providers and rates for independent evaluation services. Parents are not required to ask permission from the regional site to obtain an independent evaluation.

A regional site Board of Directors must initiate a due process hearing to challenge a parent's right to obtain an independent evaluation at no cost to the family when the Board:

A. Refuses to grant a parent's request for an independent evaluation;
B. Refuses to pay for an independent evaluation obtained by a parent;
C. Believes that the providers of an independent evaluation are not qualified according to this rule;
D. Believes that the amounts charged for the evaluation services are excessive; or
E. Believes that the regional site evaluations are appropriate.

A parent may initiate, at any time, a due process hearing to challenge the regional site's evaluation and request that the regional site be ordered to provide an independent educational evaluation. If the final decision of such a hearing is that the original evaluation is appropriate, an independent educational evaluation may still be obtained, but not at the expense of the regional site Board of Directors. Regional site Boards must provide to parents, on request, information about where such an independent educational evaluation may be obtained. If the final decision of such a hearing, or any due process hearing on the child, is that the original evaluation is inappropriate, then an independent educational evaluation must be conducted at the expense of the regional site.

Use of independent evaluation - An independent educational evaluation must be considered by the ECT in developing an IFSP for the child and may be presented as evidence at any due process hearing.

7. DISPUTE RESOLUTION

A. General

Each regional site Board of Directors must adopt procedures to informally resolve disagreements or complaints concerning compliance with State or federal special education law or regulation, or the identification, evaluation, services or placement of a child. These procedures must both encourage resolution at the regional level and encompass the safeguards listed in this rule, and must not interfere with the parent's rights as described in this rule.

Any interested party may submit a written complaint to the regional site Board of Directors or to the Department of Education alleging that a regional site has failed to comply with State or federal special education law or regulation, or when there is a disagreement regarding the identification, evaluation, placement or the provision of appropriate services to a child.

A parent or the CDS regional site Board may submit a request for mediation to resolve a dispute regarding a regional site's compliance with this rule or the provision of services in the least restrictive environment to a child with a disability. Such requests must be in writing and submitted to the Department of Education.

A parent or the CDS regional site Board may submit a written request for a due process hearing to the Department of Education when there is a disagreement regarding the identification, evaluation, placement or the provision of appropriate services to the child.

B. Request for Dispute Resolution (Hearing, Complaint, Mediation)

i. Request by parent: A parent, a surrogate parent, or the designated representative of the parent or of the surrogate parent, who requests a due process hearing, complaint or mediation must notify, in writing, the Due Process Coordinator in the Department of Education of the request for a hearing, complaint or mediation and provide a copy of the request to the CDS regional site director.

ii. The request must:

   a. include the name of the child involved, the parent's name, address and telephone number, the CDS regional site which serves the child, and a brief summary of the disagreement and the facts relating to the disagreement:
   b. include a summary of how the CDS regional site was informed of the disagreement, and any actions taken by the CDS regional site to resolve the problem and how the problem could be resolved: and
   c. be in writing: an oral request must be reduced to writing by the CDS regional site director, or a designee, and signed by the parents.

iii. Request by CDS regional site: If the CDS regional site seeks a due process hearing or mediation, the CDS regional site director must notify the parent prior to forwarding the request to the Due Process Coordinator. The notice to the parent and the request to the Due Process Coordinator must:

   a. include the name of the child involved, the parent's name, address and telephone number, the CDS regional site which serves the child, and a brief summary of the disagreement and the facts relating to the disagreement;

b. include a summary of how the parent was informed of the disagreement and any actions taken by the CDS regional site to resolve the problem and how the problem could be resolved: and

c. be in writing.

iv. Duties of the Department: Upon receipt of the request for a due process hearing, complaint, or mediation, the Due Process Coordinator must provide the parent with information pertaining to the availability of free or low-cost legal aid and other related services.

C. Mediation, Alternative Dispute Resolution

If either a parent or a CDS regional site seeks a due process hearing, the CDS site director must encourage the parents to resolve the disagreement through mediation or other third-party assistance. Such attempts must not interfere with the parent's right to a due process hearing nor with the thirty (30)-day time limit in which a due process hearing must be held.

D. Mediation Procedures

Mediation shall be voluntary on the part of the parties. Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these rules.

Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of early intervention or special education and related services. A list of mediators and their qualifications is available from the Department of Education.

The cost of the mediation process shall be assumed by the Department. The parties to a mediation are responsible for their personnel costs and travel expenses.

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement which will be incorporated by reference into the child's IFSP/IEP and will be binding on all parties to the agreement.

Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

An individual who serves as a mediator under these rules may not be an employee of any CDS regional site or the Department of Education, and may not have a personal or professional conflict of interest.

Parents or CDS regional sites who choose not to use the mediation process to resolve a disagreement are encouraged to contact the Due Process Office at the Department of Education, or the Special Needs Parent Information Network (SPIN) in order to have the procedures and benefits of the mediation process explained.

Parents may be accompanied to the mediation by an advocate or other person knowledgeable in providing early intervention or special education services. CDS regional site personnel with authorization to commit resources and personnel involved with the dispute shall attend any mediation. CDS regional site Boards may be represented by counsel in a mediation only when the parents are represented by counsel. An attorney representing a parent shall provide the CDS regional site director and the Due Process Office of the Maine Department of Education with at least seven (7) days written notice prior to the mediation that they will be representing the parent at the mediation. Parties may consult with their attorneys prior to and after engaging in mediation.

E. Complaint Procedures

An organization or individual may file a written complaint with the Commissioner alleging that a CDS regional site, or other responsible public agency, contracted provider or private school/program, has failed to comply with State or federal law regarding the identification, evaluation, placement or the provision of appropriate services to a child with a disability. A form is available from the Department of Education, various parent support groups and the CDS regional site for submitting written complaints.

i. Filing a Complaint

The complaint must meet the requirements of Section XII.7(B) of this rule and include a statement that a public agency has violated a requirement of this rule, the facts on which the statement is based, and efforts to resolve the dispute with the CDS regional site.

The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received. A complaint seeking compensatory services may be filed for violations that occurred not more than three (3) years prior to the date of receipt of the complaint.

The Department shall appoint a complaint investigator in a timely manner to ensure that all complaints are investigated and resolved within sixty (60) calendar days of the receipt of the complaint.

The complaint investigator shall:

Carry out an independent on-site investigation, if the investigator determines that such an investigation is necessary;

Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

Review all relevant information and make a preliminary independent determination as to whether the public agency is violating a requirement of this rule;

Convene a complaint resolution meeting, if necessary, to discuss preliminary findings and develop a proposed resolution to the complaint; and

Transmit a written decision to the Department of Education that addresses each allegation in the complaint.

ii. Complaint Investigation Reports

The Department shall review the written decision of the complaint investigator and issue a final and binding decision to the complainant and the respondent.

Each complaint investigation report issued by the Department shall include:

Findings of fact and conclusions and the reasons for the Department's final decision.

An explanation of any exceptional circumstances which justify an extension of the sixty (60) day time limit under this section.

Procedures for effective implementation of the Department's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

iii. Other Complaint Procedures

If a written complaint is received that is also the subject of a due process hearing, the Department will set aside any part of the complaint that is being addressed in the due process hearing. If a complaint is received that had previously been decided in a due process hearing involving the same parties, then the hearing decision is binding and the Department will inform the complainant to that effect.

A parent or interested party may file a complaint alleging that a CDS regional site has failed to implement a hearing decision or mediation agreement.

A parent, interested party or CDS regional site may consult with counsel regarding a complaint. Only when the parents are represented by counsel in a complaint resolution meeting may the CDS regional site be represented by counsel. An attorney representing a parent shall provide the CDS regional site director and the Due Process Office of the Maine Department of Education with at least seven (7) days written notice prior to any complaint resolution meeting that they will be representing the parent at the complaint resolution meeting.

F. During the pendency of any due process proceeding (hearing, complaint, mediation) or judicial proceeding regarding the identification, evaluation, programming or placement of a child with a disability, unless the regional site Board of Directors and the parents of the child agree otherwise, or the child has been placed in an interim alternative educational setting consistent with Section XII.9 of this rule the child involved in the proceeding shall remain in the child's current program of services, unless a court of competent jurisdiction has granted an injunction to remove the child from the placement. If the proceeding involves the initiation of services, those services that are not being contested and, if both parties agree, those services that are being contested, must be provided. A decision by a due process hearing officer which is favorable to the parents constitutes an agreement between the parents and the regional site Board of Directors. Pending any judicial proceeding appealing that decision, the child's program of services shall be changed to conform to that decision.

8. DUE PROCESS HEARING

A. Appointment of Hearing Officer

The Commissioner shall appoint the impartial hearing officer in a timely manner upon receiving the request.

i. Impartiality - The hearing officer shall not be an employee of the public agency or other program or entity involved in the provision of services or care to the child; or have a personal or professional interest that would conflict with the hearing officer's objectivity in the hearing. A person who otherwise qualifies to conduct a hearing under this provision is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

The hearing officer shall not communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.

This section shall not prohibit the hearing officer from speaking with counsel or from having the advice of agency staff or consultants retained by the Department who have not participated and will not participate in the proceeding.

ii. Challenge - The appointment of the hearing officer may only be challenged on the grounds of conflict of interest or bias. Upon the filing in good faith by a party of a timely charge of conflict of interest or bias, requesting that the hearing officer disqualify himself/herself, the hearing officer shall determine the matter as part of the record.

iii. Notice - Notice of the appointment of the hearing officer and copies of Section XII of this rule shall be sent to the parties.

B. Notice of Hearing Time, Place

The hearing officer shall establish the time and place of the hearing, which, so far as possible, should be convenient to the parents and child involved, and shall notify both parties.

All hearings shall be scheduled so that the prehearing conference and hearing shall occur within thirty (30) days of the receipt of the request for a hearing. The hearing officer may grant, for just cause, an extension of up to ten (10) days upon written request of either party. Any such extensions shall not postpone the hearing decision in excess of sixty (60) days from the receipt of the request for a hearing, except by mutual agreement of all parties.

C. Settlement Offer

The regional site Board of Directors may provide the parents with a written settlement offer. If the parents accept the settlement offer, they shall notify of the regional site Board of Directors, the hearing officer, and the Commissioner no later than the date of the prehearing conference. Under no circumstances shall either party inform the hearing officer about a settlement offer, or introduce as evidence a settlement offer, that has not been accepted, in whole or in part, by the parents.

The Commissioner, or a designee, may advise and engage in settlement discussions or further mediation efforts, although these may not postpone the scheduled due process hearing. The parties may at any time prior to, during, or after the due process hearing engage in settlement discussions.

D. Prehearing Conference

The hearing shall be closed to the public unless otherwise requested by the parents. Participants at the hearing may include:

i. The parents and their representative(s);
ii. The Chair of the regional site Board of Directors or a designee, and designated regional site staff;
iii. Witnesses called by the parties;
iv. Witnesses called by the hearing officer; and
v. The custodian of the child, as defined in 22 MRSA §(5), if the child is a State ward.

E. Subpoenas

i. Issuance of subpoenas - The Commissioner may issue subpoenas in the name of the Department to require the attendance and testimony of any witness and the production of any evidence relating to any issue or fact in the due process hearing upon the request of either party to the hearing. Issuance of subpoenas shall conform in all other respects to the requirements of the Maine Administrative Procedure Act, 5 MRSA § 9060.

ii. Fees, expenses - Any fees for attendance and travel required by the witnesses shall be the responsibility of the party seeking the subpoena.

iii. Petition for modification of subpoena - Any witness subpoenaed may petition the Commissioner to vacate or modify the subpoena issued. The Commissioner shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Commissioner deems appropriate, the petition may be granted in whole or in part upon a finding by the hearing officer that the testimony of the evidence requested does not relate with reasonable directness to any matter in question, or that the subpoena for attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when evidence is requested.

F. Hearing Procedures

The due process hearing shall be conducted according to the procedures established in this section.

i. Opening statement - The hearing officer shall open the hearing by describing the procedures to be followed during the hearing, the facts and issues to be determined in the hearing, any stipulations or agreements between the parties, and a statement of the right to appeal the decision.

ii. Testimony - Witnesses called by either party shall testify one at a time. They shall be permitted to listen to one another's testimony only with the consent of both parties.

iii. Recording - A written or electronic verbatim recording of all testimony and other evidence presented at the hearing shall be made and shall become part of the record of the hearing.

iv. Evidence admitted - The hearing officer shall not be bound by the rules of evidence applicable of the courts, but shall be bound by the rules of privilege recognized by law. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The hearing officer may exclude irrelevant or unduly repetitious evidence; a party may exclude evidence not disclosed to the other party at least five (5) business days prior to the due process hearing. Persons presenting testimony or exhibits shall be sworn or affirmed.

v. Official notice - The hearing officer may take official notice of any facts on which judicial notice could be taken and, in addition, may take official notice of statutes, regulations and non-confidential Department or CDS regional site records. Parties shall be notified of the material so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts officially noticed shall be included and indicated as such in the record.

vi. Cross-examination - Both parties and the hearing officer have the right to examine and cross-examine witnesses.

vii. Order of presentation - The order of presentation of testimony and exhibits shall be as follows unless otherwise agreed by the parties or determined appropriate by the hearing officer:

a. opening remarks by the hearing officer;
b. opening statement by the party requesting the hearing;
c. opening statement by the other party;
d. presentation of evidence by the party (site director or parents) requesting the hearing and any witnesses for that party;
e. presentation of evidence by the other party and any witnesses for that party;
f. rebuttal witnesses for the party requesting the hearing;
g. rebuttal witnesses for the other party;
h. summation by the party requesting the hearing; and
i. summation by the other party.

viii. Concluding remarks by the hearing officer - Prior to adjournment, the hearing officer shall advise all parties that the findings of fact and the hearing officer's written decision shall be made within fifteen (15) days of the conclusion of the hearing.

ix. Conclusion of hearing; reopening of record - Upon conclusion of the hearing, no other evidence or testimony shall be permitted unless the record is held open by the hearing officer for the receipt of additional material specifically designated. The hearing officer may reopen the record for further proceedings at any time prior to the issuance of the final decision upon provision of appropriate notice to parties and other interested persons.

G. Expedited Hearings

Expedited Due Process Hearings shall:

i. meet the hearing procedures specified in Section XII.8(F) of this rule except that the hearing officer may elect to limit the hearing to a single day for presentation of evidence, direct and cross-examination of witnesses, and rebuttal;
ii. result in a hearing within twenty (20) business days of the request for the hearing, unless the parents and the CDS regional site Board agree otherwise;
iii. result in a decision being mailed to the parties no later than forty-five (45) days after the receipt of the request without exceptions or extensions;
iv. meet the requirements of Section XII.8(A) of this rule, except that the time periods identified in Section XII.8 (F) of this rule for disclosure of evidence shall, for purposes of expedited due process hearings, be not less than five (5) business days; and
v. be conducted by a due process hearing officer who satisfies the requirements of Section XII.8(A) of this rule.

The decision of a expedited due process hearing is appealable to State or federal court.

H. Final Decision Notice

Every decision made at the conclusion of a proceeding subject to this rule shall be in writing and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.

i. Findings of fact, final decision - The hearing office shall issue the findings of fact and the final decision to all parties within fifteen (15) days after the conclusion of the hearing and no later than forty-five (45) days of the Department's receipt of the request for hearing.

ii. Transmittal of record of hearing - The hearing officer shall forward the complete record of the hearing, the finding of facts, and the final decision to the Commissioner within fifteen (15) days after the conclusion of the hearing and no later than forty-five (45) days of the Department's receipt of the request for hearing. The Department of Education will make available the written findings of fact and decision to the public and to the Interdepartmental Coordinating Council for Early Intervention, after deleting any personally identifiable information.

iii. Appeal - Any party may appeal the decision of the hearing officer to the Maine Superior Court or the Federal District Court. Maine law requires that such appeals be brought in Maine Superior Court within thirty (30) days of receipt of the decision of the hearing officer. The Federal Court also may elect to apply this thirty (30)-day statute of limitations to appeals brought in Federal Court. An appeal may be filed in Maine Superior Court in the county in which the child resides or in the county in which the regional site is located.

iv. Compliance - The regional site Board of Directors shall submit to the Commissioner, within forty-five (45) days of the date the regional site Board of Directors receives the final decision, documentation that the regional site Board of Directors has complied with the decision or that an appeal is pending.

I. Hearing Record

In proceedings subject to this rule the hearing officer shall make a record consisting of:

i. All papers filed and evidence received or considered;
ii. A statement of facts officially noticed;
iii. Offers of proof, objections and rulings thereon;
iv. Findings of fact; and
v. The final decision.

The Commissioner shall retain the entire record of the hearing. Any party to the hearing has the right to a written or electronic record of the hearing.

Parents are entitled to a written record or, at their option, an electronic verbatim record of the hearing at no cost to the parents. The Department of Education shall provide a record of the hearing to the parents, including a transcript, upon receipt of notice of an appeal of the decision by the parents.

J. Hearing Expenditures

i. Public Agency expenses - Personnel expenses incurred by the regional site Board of Directors in the conduct of a hearing shall be considered allowable costs, for which the regional Board may use grant funds not dedicated to direct services for children. All expenditures (such as fees, per diem expenses) by a regional site Board of Directors to personnel involved in a hearing shall be supported by written agreements between those personnel and the regional site Board of Directors.

ii. Private expenses of hearing –Reasonable attorneys' fees (in cases involving children age 3-5) incurred by the parents shall be the responsibility of the regional site Board of Directors if the parent prevails in the special education hearing and a court of competent jurisdiction so orders, or when included in an out-of-court settlement that has been agreed to by both parties.

iii. Public expenses of hearing - Impartial hearing officer expenses for due process hearings will be paid directly by the Department.

9. DISCIPLINE OF CHILDREN AGE 3-5 WITH DISABILITIES

For purposes of this section, program day means any day, including a partial day, that children with and without disabilities are in attendance at the program for instructional purposes.

Change of Placement for Disciplinary Removals

For purposes of removal of a child with a disability from the child's current educational placement under Sections XII.9(A)-9(M) of this rule, a change of placement occurs if the removal is for more than ten (10) consecutive program days; or the child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten (10) program days in a program year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

Authority of Program Personnel

A. Program personnel may order:

  i. to the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than ten (10) consecutive program days for any violation of program rules, and additional removals of not more than ten (10) consecutive program days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement as defined in Section XII.9 of this rule, above);

  ii. after a child with a disability has been removed from his or her current placement for more than ten (10) program days in the same program year, during any subsequent days of removal the regional site must provide services to the extent required under Section XII.9(E) of this rule; and

  iii. A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, if:

    a. the child carries a weapon to or possesses a weapon at the program or a program function under the jurisdiction of a State or a local educational agency; or

    b. the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at the program or a program function under the jurisdiction of a State or local educational agency.

B. i. Either before or not later than ten (10) business days after either first removing the child for more than ten (10) program days in a program year or commencing a removal that constitutes a change of placement as defined under Section XII.9 of this rule, including the action described in paragraph A(iii) of this section—

a. If the CDS regional site did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (A) of this section, the CDS regional site shall convene an ECT meeting to develop an assessment plan.

b. If the child already has a behavioral intervention plan, the ECT shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

ii. As soon as practicable after developing the plan described in paragraph (B)(i)(a) of this section, and completing the assessments required by the plan, the CDS regional site shall convene an ECT meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

C. i. If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than ten (10) program days in a program year is subjected to a removal that does not constitute a change of placement as defined under Section XII.9 of this rule, the ECT members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

ii. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

D. For purposes of this section, the following definitions apply:

i. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 United States Code 812(c)).

ii. Illegal drug—

a. Means a controlled substance; but

b. Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

iii. Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

E. FAPE for Children Suspended or Expelled from Program

i. A public agency need not provide services during periods of removal under Section XII.9(A)(i) of this rule to a child with a disability who has been removed from his or her current placement for ten (10) program days or less in that program year, if services are not provided to a child without disabilities who has been similarly removed.

ii. In the case of a child with a disability who has been removed from his or her current placement for more than ten (10) program days in that program year, the public agency, for the remainder of the removals, must:

a. Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum (or appropriate activities) and appropriately advance toward achieving the goals set out in the child's IFSP/IEP, if the removal is:

1. Under the program personnel's authority to remove for not more than ten (10) consecutive program days as long as that removal does not constitute a change of placement as defined under Section XII.9 of this rule; or

2. For behavior that is not a manifestation of the child's disability, consistent with Section XII.9(I) of this rule; and

b. Provide services consistent with Section XII.9(G) of this rule, regarding the determination of the appropriate interim alternative educational setting, if the removal is—

1. For drug or weapons offenses under Section XII.9(A)(iii) of this rule; or

2. Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with Section XII.9(F) of this rule.

iiia. CDS regional site personnel, in consultation with the child's teacher/provider, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum (or appropriate activities) and appropriately advance toward achieving the goals set out in the child's IFSP/IEP if the child is removed under the authority of program personnel to remove for not more than ten (10) consecutive program days as long as that removal does not constitute a change of placement as defined under Section XII.9 of this rule.

iiib. The child's ECT determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum (or appropriate activities) and appropriately advance toward achieving the goals set out in the child's IFSP/IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with Section XII.9(I) of this rule.

F. Authority of Hearing Officer

A hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing—

i. Determines that the CDS regional site has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

ii. Considers the appropriateness of the child's current placement;

iii. Considers whether the CDS regional site has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

iv. Determines that the interim alternative educational setting that is proposed by CDS regional site personnel who have consulted with the child's teacher/provider, meets the requirements of Section XII.9(G) of this rule.

v. As used in this section, the term "substantial evidence" means beyond a preponderance of the evidence.

G. Determination of Setting

i. General. The interim alternative educational setting referred to in Section XII.9(A)(iii) of this rule must be determined by the ECT.

ii. Additional requirements. Any interim alternative educational setting in which a child is placed under Section XII.9(A)(iii) or 9(F) of this rule must:

  a. Be selected so as to enable the child to continue to progress in the general curriculum (or appropriate activities), although in another setting, and to continue to receive those services and modifications, including those described in the child's current IFSP/IEP, that will enable the child to meet the goals set out in that IFSP/IEP; and

  b. Include services and modifications to address the behavior described in Section XII.9(A)(iii) or 9(F) of this rule or, that are designed to prevent the behavior from recurring.

H. Manifestation Determination Review

i. General. If an action is contemplated regarding behavior described in Section XII.9(A)(iii) or 9(F) of this rule, or involving a removal that constitutes a change of placement as defined under Section XII.9 of this rule for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the program that applies to all children—

  a. Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in Section XII.1 of this rule; and

  b. Immediately, if possible, but in no case later than ten (10) program days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

ii. Individuals to carry out review. A review described in paragraph (i) of this section must be conducted by the ECT and other qualified personnel in a meeting.

iii. Conduct of review. In carrying out a review described in paragraph (i) of this section, the ECT and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the ECT and other qualified personnel;

  a. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

    1. Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;
    2. Observations of the child; and
    3. The child's IFSP/IEP and placement; and

  b. Then determine that—

    1. In relationship to the behavior subject to disciplinary action, the child's IFSP/IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IFSP/IEP and placement;

    2. The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

    3. The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

iv. Decision. If the ECT and other qualified personnel determine that any of the standards in paragraph (iii)(b) of this section were not met, the behavior must be considered a manifestation of the child's disability.

v. Meeting. The review described in paragraph (i) of this section may be conducted at the same ECT meeting that is convened under Section XII.9(B) of this rule.

vi. Deficiencies in IFSP/IEP or placement. If, in the review in paragraphs (ii) and (iii) of this section, the CDS regional site identifies deficiencies in the child's IFSP/IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

I. Determination that Behavior was not Manifestation of Disability

i. General. If the result of the review described in Section XII.9(H) of this rule is a determination, consistent with Section XII.9(H)(iv) of this rule, that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in Section XII.9(E) of this rule.

ii. Additional requirement. If the program initiates disciplinary procedures applicable to all children, the CDS regional site shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

iii. Child's status during due process proceedings. Except as provided in Section XII.9(K) of this rule, the "stay-put" provision described in Section XII.7(F) of this rule applies if a parent requests a hearing to challenge a determination, made through the review described in Section XII.9(H) of this rule, that the behavior of the child was not a manifestation of the child's disability.

J. Parent Appeal

i. General

a. If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under Sections XII.9(A)-9(M) of this rule, the parent may request a hearing.

b. The State or CDS regional site shall arrange for an expedited hearing in any case described in paragraph (i)(a) of this section if a hearing is requested by a parent.

ii. Review of decision

a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the CDS regional site has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Section XII.9(H)(iv) of this rule.

b. In reviewing a decision under Section XII.9(A)(iii) of this rule to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in Section XII.9(F) of this rule.

K. Placement During Appeals

i. General. If a parent requests a hearing or an appeal regarding a disciplinary action described in Section XII.9(A)(iii) or 9(F) of this rule to challenge the interim alternative educational setting or the manifestation determination, the child must retain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Section XII.9(A)(iii) or 9(F) of this rule, whichever occurs first, unless the parent and the State agency or CDS regional site agree otherwise.

ii. Current placement. If a child is placed in an interim alternative educational setting pursuant to Section XII.9(A)(iii) or 9(F) of this rule and program personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (iii) of this section.

iii. Expedited hearing

a. If program personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the CDS regional Board may request an expedited due process hearing.

b. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in Section XII.9(F) of this rule.

c. A placement ordered pursuant to paragraph (iii)(b) of this section may not be longer than forty-five (45) days.

d. The procedure in paragraph (iii) of this section may be repeated, as necessary.

L. Protections for Children Not Yet Eligible for Special Education and Related Services

i. General. A child who has not been determined to be eligible for special education and related services under these rules and who has engaged in behavior that violated any rule or code of conduct of the program, including any behavior described in Section XII.9(A) or 9(F) of this rule, may assert any of the protections provided for in these rules if the CDS regional site had knowledge (as determined in accordance with paragraph (ii) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

ii. Basis of knowledge. A CDS regional site must be deemed to have knowledge that a child is a child with a disability if—

a. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write to has a disability that prevents a written statement) to personnel of the CDS regional site that the child is in need of special education and related services;

b. The behavior or performance of the child demonstrates the need for these services, in accordance with Section VIII of this rule;

c. The parent of the child has requested an evaluation of the child pursuant to Section VI of this rule; or

d. The teacher of the child, or other personnel of the program, has expressed concern about the behavior or performance of the child to the director of the CDS regional site or to other site personnel in accordance with the CDS regional site's established child find or special education referral system.

iii. Exception. A CDS regional site would not be deemed to have knowledge under paragraph (ii) of this section if, as a result of receiving the information specified in that paragraph, the CDS regional site—

a. Either—

1. Conducted an evaluation under Section VI of this rule and determined that the child was not a child with a disability under this rule; or

2. Determined that an evaluation was not necessary; and

b. Provided notice to the child's parents of its determination under paragraph (iii)(a) of this section, consistent with Section XII.3 of this rule.

iv. Conditions that apply if no basis of knowledge

a. General. If a CDS regional site does not have knowledge that a child is a child with a disability (in accordance with paragraphs (ii) and (iii) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (iv)(b) of this section.

b. Limitations

1. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Section XII.9(A) or 9(F) of this rule, the evaluation must be conducted in an expedited manner.

2. Until the evaluation is completed, the child remains in the educational placement determined by the program personnel, which can include suspension or expulsion without educational services.

3. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the regional site and information provided by the parents, the CDS regional site shall provide special education and related services in accordance with the provisions of this rule, including the requirements of Sections XII.9(A) – 9(K) of this rule.

M. Expedited Due Process Hearings

i. Expedited due process hearings under Sections XII.9(F)-9(K) of this rule must—

  a. Meet the requirements of Section XII.8(F) of this rule; and

  b. Be conducted by a due process hearing officer who satisfies the requirements of Section XII.8(A) of this rule.

ii. Expedited hearings shall result in a written decision being mailed to the parties within forty-five (45) days of the CDS regional site's receipt of the request for the hearing, without exceptions or extensions.

iii. The timeline established under paragraph (ii) of this section must be the same for expedited hearings requested by parents or CDS regional sites.

iv. The decisions on expedited due process hearings are appealable consistent with Section XII.8(H) of this rule.

AUTHORITY: 20-A MRSA § 7727(3)

EFFECTIVE DATE: May 15, 1991

AMENDED: May 16, 1993; October 31, 1994; August 2, 2000; May 26, 2001

DATE (ELECTRONIC CONVERSION): May 19, 1996